

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*,

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al.*, *Appellees*.

No. 17,681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*,

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al.*, *Appellees*.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals

of Columbia Circuit

FILED APR 9 1963

Nathan J. Paulson
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INDEX

	Page
Relevant Docket Entries.....	1
Complaint for Declaratory Judgment and Injunction, filed June 9, 1962.....	6
Motion for Preliminary Injunction, filed June 9, 1962.....	20
Affidavit in Support of Motion for Preliminary Injunction, filed June 9, 1962.....	22
Exhibit A	28
Exhibit B	31
Exhibit C	34
Motion of Whitney National Bank in Jefferson Parish to Intervene as a Defendant, filed June 19, 1962.....	40
Affidavit in Support of Defendant, filed June 20, 1962.....	41
Defendant Saxon Exhibit 1.....	49
Exhibit 2	57
Exhibit 3	58
Exhibit 4 Transcript of Proceedings.....	59
Proceedings	62
Oral Argument of Keehn W. Berry, President, Whitney Holding Corporation	63
Oral Statement of Louis J. Roussel, American State Gulf Natural Gas Corporation and Universal Drilling Company, Inc.	75
Oral Statement of Clem H. Sehrt, Sehrt & Boyle.....	83
Oral Statement of Victor J. Passera, Jr., President, the Na- tional Bank of Commerce in Jefferson Parish.....	90
Rebuttal Statement of Malcolm L. Monroe, Monroe & Le- mann, New Orleans, Louisiana.....	92
Exhibit 5	96
Order Approving Application Under Bank Holding Company Act	97
Application By Whitney Holding Corporation for Permis- sion To Become a Bank Holding Company: Statement....	99
Concurring Statement of Governor Mitchell.....	107
Dissenting Statement of Governor Robertson.....	109
Defendant's Exhibit 6.....	112
Affidavit in Support of Defendant, filed June 21, 1962.....	115

	Page
Intervening Defendant Exhibit A.....	119
Exhibit B.....	132
Exhibit C.....	139
Exhibit D.....	141
Exhibit E.....	143
Exhibit F.....	144
Plaintiffs' Opposition to Motion of Whitney National Bank in Jefferson Parish To Intervene as a Defendant, filed June 26, 1962.....	147
Defendant's Response to Motion of Whitney National Bank in Jefferson Parish To Intervene as a Defendant, filed June 21, 1962.....	148
Exhibit A.....	151
Exhibit B.....	155
Exhibit C.....	156
Exhibit D.....	157
Affidavit in Support of Plaintiffs, filed June 25, 1962.....	159
Plaintiffs' Exhibit E.....	161
Plaintiffs' Exhibit F.....	165
Plaintiffs' Exhibit H.....	166
Plaintiffs' Exhibit I.....	167
Petition of the Bank of Louisiana in New Orleans, Inter- vening Plaintiff, for Declaratory Judgment and Injunctive Order, filed June 26, 1962.....	170
Motion for Voluntary Dismissal by Merchants Trust and Savings Bank, filed June 26, 1962.....	172
Affidavit in Support of Application for Withdrawal or Dis- continuance of Suit By Plaintiff, Merchants Trust and Savings Bank, filed June 26, 1962.....	173
Motion for Temporary Restraining Order, filed June 27, 1962.	174
Affidavit in Support of Plaintiffs, filed June 27, 1962.....	175
Temporary Restraining Order, filed June 27, 1962.....	176
Official Transcript of Proceedings, filed July 7, 1962.....	178
Defendant's Response to Motion of the Bank of Louisiana in New Orleans To Intervene as a Plaintiff, filed June 29, 1962	192
Defendant's Response to Motion for Voluntary Dismissal By Merchants Trust and Savings Bank, filed June 29, 1962	193
Affidavit in Support of Plaintiffs, filed July 5, 1962.....	193

III

	Page
Affidavit in Support of Plaintiff, Bank of New Orleans and Trust Company, filed July 5, 1962.....	201
Order Granting Motion of The Bank of Louisiana in New Orleans to Intervene as a Plaintiff, filed July 5, 1962.....	203
Affidavit in Support of Motion for Preliminary Injunction, filed July 5, 1962.....	204
Affidavit in Support of Plaintiffs, filed July 6, 1962.....	209
Order, filed July 6, 1962.....	210
Answer of Intervening Defendant to Plaintiffs' Complaint for Declaratory Judgment and Injunctive Order, filed July 10, 1962	211
Order Approving Application Under Bank Holding Company Act	217
Order Allowing Whitney National Bank in Jefferson Parish to Intervene as a Defendant, filed July 10, 1962.....	218
Findings of Fact and Conclusions of Law in Support of Preliminary Injunction, filed July 10, 1962.....	219
Preliminary Injunction, filed July 10, 1962.....	221
Motion of Defendant Comptroller of the Currency for Summary Judgment, filed July 11, 1962.....	222
Statement of Defendant Comptroller of the Currency Pursuant to Local Civil Rule 9(h), filed July 11, 1962.....	223
Official Transcript of Proceedings, filed July 16, 1962.....	225
Plaintiffs' Opposition to Defendant Comptroller's Motion for Summary Judgment and Cross-Motion for Summary Judgment in Their Favor Against Defendant Comptroller, filed July 24, 1962.....	274
Plaintiffs' Statement of Facts in Support of Cross-Motion for Summary Judgment, filed July 24, 1962.....	275
Plaintiffs' Exhibit L.....	295
Plaintiffs' Exhibit M.....	301
Affidavit in Support of Plaintiff, Bank of Louisiana in New Orleans, filed July 24, 1962.....	303
Affidavit in Support of Plaintiff, Guaranty Bank & Trust Company, Lafayette, Louisiana, filed July 24, 1962.....	305
Opposition of Defendant Comptroller of the Currency to Plaintiffs' Cross-Motion for Summary Judgment and Further Cross-Motion of Said Defendant to Dismiss, filed August 10, 1962.....	306

	Page
Statement of Defendant Comptroller of the Currency in Response to the Statement of Facts Supporting Plaintiffs' Cross-Motion for Summary Judgment, filed August 10, 1962	307
Supplementary Affidavit of James J. Saxon, Comptroller of the Currency, filed August 10, 1962.....	309
Defendant Saxon Exhibit 7.....	311
Motion for Leave to Amend Answer, filed August 13, 1962..	313
Supplemental Answer of Intervening Defendant Whitney National Bank in Jefferson Parish, filed September 10, 1962	314
Motion of Intervening Defendant for Summary Judgment, filed August 13, 1962.....	317
Statement of Intervening Defendant Whitney National Bank in Jefferson Parish of Material Facts as to Which There is no Genuine Issue, filed August 13, 1962.....	318
Affidavit in Support of Intervening Defendant, filed August 13, 1962	324
Intervening Defendant Exhibit 5.....	327
Affidavit in Support of Intervening Defendant, filed August 13, 1962	329
Exhibit 1.....	331
Exhibit 2.....	333
Exhibit 3.....	336
Exhibit 4.....	337
Statement of Points and Authorities of Intervening Defendant, filed August 13, 1962.....	339
Statement of Genuine Issues Filed By Intervening Defendant Whitney National Bank in Jefferson Parish in Opposition to Plaintiffs' Motion for Summary Judgment, filed August 13, 1962	343
Response of Defendant Comptroller of the Currency to Motion of Intervening Defendant for Summary Judgment, filed August 22, 1962.....	344
Response of Defendant Comptroller of the Currency to Motion of Intervening Defendant for Leave to Amend Answer, filed August 22, 1962.....	345
Motion of J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, To Intervene as a Plaintiff Herein, filed September 4, 1962.....	346

	Page
Complaint of Intervening Plaintiff, J. W. Jeansonne, Louisiana State Bank Commissioner, filed September 10, 1962...	348
Plaintiffs' Opposition to Intervening Defendant's Motion for Summary Judgment and Motion for Leave to Amend and to Defendant's Motion to Dismiss, filed September 5, 1962.	359
Plaintiffs' "Statement of Genuine Issues" In Opposition to Defendant's and Intervening Defendant's Cross Motion for Summary Judgment, filed September 6, 1962.....	360
Exhibit O	366
Exhibit P	367
Exhibit Q	368
Exhibit R	369
Exhibit T	370
Exhibit U	371
Exhibit V-1	372
Exhibit V-2	373
Exhibit V-3	374
Exhibit V-4	375
Exhibit V-5	376
Exhibit V-6	377
Exhibit V-7	378
Exhibit V-8	379
Exhibit W	380
Exhibit X-1	381
Exhibit X-2	382
Exhibit Y	383
Stipulation, filed September 7, 1962.....	384
Order Allowing State Bank Commissioner to Intervene as a Plaintiff, filed September 7, 1962.....	385
Order Allowing Intervening Defendant Whitney National Bank in Jefferson Parish To Serve and File an Amended Answer, filed September 7, 1962.....	387
Supplemental Affidavit in Support of Intervening Defendant, filed September 14, 1962.....	388
Intervening Defendant Exhibit 6.....	392
Answer of Intervening Defendant to Complaint of Intervening Plaintiff, J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, filed September 18, 1962..	394

	Page
Motion of the National Association of Supervisors of State Banks for Leave to Appear as Amicus Curiae, filed September 25, 1962.....	403
Opposition of J. W. Jeansonne, State Bank Commissioner of Louisiana to the Motion for Summary Judgment by Defendant, Comptroller of the Currency, and Whitney National Bank in Jefferson Parish, Intervening Defendant, and Cross-Motion for Summary Judgment, filed September 26, 1962	413
Exhibit 1	414
Exhibit 3	416
Order Granting Motion of the National Association of Supervisors of State Banks for Leave to Appear as Amicus Curiae, filed September 26, 1962.....	419
Plaintiffs' Supplemental Statement of Genuine Issues Under Local Rule 9h in Opposition to Intervening Defendant's Motion for Summary Judgment, filed September 27, 1962..	420
Plaintiffs' Exhibit Z-1.....	423
Plaintiffs' Exhibit Z-2.....	424
Plaintiffs' Exhibit AA-1	425
Plaintiffs' Exhibit AA-2	426
Plaintiffs' Exhibit CC-1	427
Plaintiffs' Exhibit CC-2	428
Opposition of Defendant Comptroller of the Currency to Cross-Motion of Intervening Plaintiff J. W. Jeansonne for Summary Judgment, filed October 5, 1962.....	429
Statement of Defendant Comptroller of the Currency in Response to the Statement of Facts Supporting the Cross-Motion of Intervening Plaintiff J. W. Jeansonne for Summary Judgment, filed October 5, 1962.....	430
Motions and Cross-Motions for Summary Judgment and Motion to Dismiss, filed November 16, 1962.....	431
Memorandum, filed November 5, 1962.....	435
Intervening Defendants' Objections to the Form of Plaintiffs' Order for Summary Judgment and Judgment, filed November 23, 1962.....	438
Memorandum in Support of Intervening Defendant's Objections to the Form of Plaintiffs' Proposed Order for Summary Judgment and Judgment, filed November 23, 1961..	440

VII

	Page
Defendant Comptroller's Objections to Form of Proposed Order: for Summary Judgment and Judgment as Submitted by Plaintiffs, filed November 26, 1962.....	443
Findings of Fact and Conclusions of Law in Support of Declaratory Judgment and Permanent Injunction, filed December 5, 1962.....	444
Order, filed December 5, 1962.....	450
Notice of Appeal, filed January 31, 1963.....	452
Notice of Appeal, filed February 1, 1963.....	453



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,672

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No. 17,681

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ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

(a)



CIVIL DOCKET
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
C. A. No. 1857-62

BANK OF NEW ORLEANS AND TRUST CO., ET AL.

vs.

JAMES J. SAXON, ET ANO.

RELEVANT DOCKET ENTRIES

Date	PROCEEDINGS
1962	
June 9	Complaint.
June 9	Motion of plaintiffs for preliminary injunction; affidavit of Edward L. Merrigan; exhibits A through D.
June 19	Motion of Whitney National Bank in Jefferson Parish to intervene.
June 20	Opposition of defendants to motion of plaintiffs for preliminary injunction; affidavit of James J. Saxon, exhibits 1, 2, 3, 4, 5 and 6.
June 21	Affidavit of James J. Gilly, President of Whitney National Bank in Jefferson Parish; exhibits A, B, C, D, D-1, D-2, E and F.
June 21	Response of defendant to motion of Whitney National Bank in Jefferson Parish to intervene.
June 26	Opposition of plaintiffs to motion of Whitney National Bank in Jefferson Parish to intervene.
June 26	Affidavit of Morgan L. Whitney and exhibits A through D; exhibit to motion of Whitney National Bank in Jefferson Parish to intervene.
June 26	Affidavit of Laurence A. Merrigan; exhibits E, F, H, and I.
June 26	Motion of the Bank of Louisiana in New Orleans to intervene.
June 26	Motion of plaintiff #2 for voluntary dismissal; affidavit of Paul F. Rogyom.

Date	PROCEEDINGS
1962	
June 27	Motion of plaintiff for temporary restraining order; affidavit of Edward L. Merrigan.
June 27	Temporary Restraining Order, security in sum of \$1,000.00; issued at 11:05 A.M. June 27, 1962. Hart, J.
June 29	Response of defendant to motion for voluntary dismissal by Merchants Trust and Savings Bank.
June 29	Response of defendant to motion of Bank of Louisiana in New Orleans to intervene.
July 5	Affidavit of Jacques A. Livaudais; affidavit of Edward L. Merrigan; affidavit of Leon M. Trice; exhibits J-O inclusive.
July 5	Order granting motion of The Bank of Louisiana in New Orleans for leave to intervene as plaintiff. Pine, J.
July 6	Affidavit of attorney Joseph Merrick Jones.
July 7	Transcript of proceedings of June 27, 1962; pages 1-27; Reporter George G. Davis (Clerk's copy).
July 6	Order dismissing cause as to plaintiff #2. Holtzoff, J.
July 10	Order granting Whitney National Bank in Jefferson Parish leave to intervene as party defendant. Holtzoff, J.
July 10	Answer of Whitney National Bank in Jefferson Parish to complaint; exhibit.
July 10	Findings of fact and conclusions of law. Holtzoff, J.
July 10	Preliminary injunction restraining defendant #1; Bond set at \$50,000.00 to be filed no later than 7-17-62. Holtzoff, J.
July 11	Motion of defendant Saxon for summary judgment; statement.
July 16	Transcript of proceeding of July 6, 1962; Vol. I, pages 1-87 (Rep. by Gerald Nevitt).
July 24	Opposition of plaintiff to motion of defendant Saxon for summary judgment; cross motion for summary judgment; statement; exhibits L, M of plaintiffs; affidavits of Clyde C. Wheeler and R. J. Castille.

Date

PROCEEDINGS

1962

- Aug. 10 Opposition of defendant comptroller of the currency to plaintiffs' cross-motion for summary judgment and further cross-motion of said defendant to dismiss; statement of facts; supplementary affidavit of James J. Saxon; exhibit 7.
- Aug. 13 Motion of intervening defendant for leave to amend answer; exhibit.
- Aug. 13 Motion of intervening defendant for summary judgment; statement of intervening defendant of material facts; affidavit of E. A. Waffenschmidt; affidavit of James Gilly and exhibits (4); points and authorities in support of this motion and in opposition to plaintiffs' motion for summary judgment.
- Aug. 13 Statement of genuine issues of intervening defendant in opposition to plaintiffs' motion for summary judgment.
- Aug. 22 Response of defendant #1 to motion of intervening defendant for summary judgment.
- Aug. 22 Response of defendant #1 to motion of intervening defendant for leave to amend answer.
- Sept. 5 Motion of J. W. Jeansonne, State Bank Commissioner of Louisiana, to intervene as plaintiff; exhibit.
- Sept. 5 Opposition of plaintiffs to intervening defendant's motion for summary judgment and motion for leave to amend and to defendant's motion to dismiss.
- Sept. 6 Plaintiffs' exhibits O through Y.
- Sept. 6 Statement of plaintiffs of genuine issues in opposition to defendant's and intervening defendant's cross-motion for summary judgment.
- Sept. 7 Stipulation re motions filed 8-10-62, 7-11-62, 8-13-62 and 7-24-62.
- Sept. 7 Consent order allowing J. W. Jeansonne, State Bank Commissioner of Louisiana, to intervene as a plaintiff and directing complaint filed; amending caption of action. Jones, J.
- Sept. 7 Order granting Whitney National Bank leave to serve and file amended answer. Jones, J.

Date

PROCEEDINGS

1962

- Sept. 10 Supplemental answer of intervening defendant Whitney National Bank in Jefferson Parish.
- Sept. 10 Complaint of intervening plaintiff J. W. Jeansonne.
- Sept. 14 Affidavit of James Gilly, Jr.; intervening defendant's exhibit 6.
- Sept. 18 Answer of intervening defendant to complaint of intervening plaintiff, J. W. Jeansonne.
- Sept. 25 Motion of National Association of Supervisors of State Banks for leave to appear as Amicus Curiae; memorandum; appendices A, B, C, D.
- Sept. 26 Opposition of J. W. Jeansonne to motion for summary judgment; exhibits 1 and 3.
- Sept. 26 Order granting motion of National Association of Supervisors of State Banks to appear as Amicus Curiae. Sirica, J.
- Sept. 27 Plaintiffs' exhibits H, Z-1, Z-2, AA-1, AA-2, BB, CC-1, CC-2.
- Sept. 27 Supplemental statement of plaintiffs of genuine issues.
- Oct. 2 Memorandum of Amicus Curiae National Association of Supervisors of State Banks; appendices A, B, C, D.
- Oct. 5 Opposition of defendant Saxon to cross-motion of intervening plaintiff Jeansonne for summary judgement; statement.
- Oct. 10 Motion of defendant Comptroller for summary judgment, cross motion of plaintiffs for summary judgment, motion of intervening defendant for summary judgment, cross motion of intervening plaintiff for summary judgment, and motion of defendant Comptroller to dismiss heard and taken under advisement (Rep. G. R. Walker). McLaughlin, J.
- Nov. 5 Memorandum granting cross-motions for summary judgment of plaintiffs and intervening plaintiffs; denying motions for summary judgment of defendant and intervening defendant and denying cross-motion to dismiss of defendant. McLaughlin, J.

Date PROCEEDINGS

1962

- Nov. 16 Transcript of proceedings 10-11-12, Volume 1, pages 1-123 (Rep. G. Russell Walker) (court copy).
 Nov. 23 Objections of intervening defendant to proposed order for summary judgment; memorandum.
 Nov. 26 Objections of defendant Saxon to form of proposed order for summary judgment and Judgment.
 Dec. 5 Findings of fact and conclusions of law. McLaughlin, J.
 Dec. 5 Order denying defendant's and intervening defendant's motions for summary judgment and defendant's motion to dismiss; granting plaintiffs' and intervening plaintiffs' cross-motions for summary judgment; ordering that defendant Comptroller of Currency may not issue a certificate of authority to intervening defendant and permanently enjoining such issuance; undertaking discharge; with costs. McLaughlin, J.

1963

- Jan. 31 Notice of appeal of intervening defendant, Whitney National Bank in Jefferson Parish.
 Feb. 1 Notice of appeal of defendant.
 Feb. 7 Cost bond on appeal of Whitney National Bank in amt. of \$250.00 with The Fidelity & Casualty Co. of New York approved. (fiat) Jones, J.

Filed June 9, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title Omitted]

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

1. Plaintiff, Bank of New Orleans and Trust Company, is a banking corporation duly organized and existing under and pursuant to the laws of the State of Louisiana. Said plaintiff, a State bank, maintains its principal office and banking branches entirely within the City of New Orleans, Parish of Orleans, State of Louisiana, and at these banking facilities, so located and limited, serves and depends upon the banking business of customers and depositors resident and located principally in the Parishes of Orleans and Jefferson, State of Louisiana.

2. Plaintiff, Merchants Trust and Savings Bank, is a banking corporation duly organized and existing under and pursuant to the laws of the State of Louisiana. Said plaintiff, a State bank, maintains its banking offices and facilities entirely on the East Bank of the Mississippi River in the Parish of Jefferson, State of Louisiana, and at these facilities, so located and limited, serves and depends almost entirely upon the banking business of customers and depositors resident or located in the Parish of Jefferson, State of Louisiana.

3. Plaintiff, Guaranty Bank and Trust Company, of Lafayette, Louisiana, is a banking corporation organized and existing under and pursuant to the laws of the State of Louisiana and maintains banking offices and facilities in Lafayette Parish, State of Louisiana, which Parish is very close to the Parishes of Jefferson and Orleans, and said bank joins as a plaintiff herein because the orders and actions of the defendant herein complained of will have a serious adverse effect upon and will cause irreparable damage to its banking business, limited by law to its Parish as aforesaid.

4. Defendant is the Comptroller of the Currency, an offi-

cer of the United States Government, appointed to serve and serving under and pursuant to the provisions of *Title 12 U.S.C. § 1, et seq.*, and defendant, who maintains his office in the District of Columbia, is an "agency" of the said United States Government within the meaning of *Title 5 U.S.C. § 1001, et seq.*, and defendant is sued herein in his capacity as such Comptroller of the Currency.

5. The jurisdiction of this Court over this action is predicated upon the provisions of *Title 28 U.S.C. § 1331*, this being an action arising under the laws of the United States wherein the matter in controversy exceeds the sum of value of \$10,000., exclusive of interest and costs; and upon the provisions of law which grant to this Court the jurisdiction and power to render declaratory judgments, restraining orders and injunctions in proper cases; and upon the provisions of *Sections 11-305 and 11-306* of the District of Columbia Code (1961 Edition) which grant to this Court general jurisdiction over all cases in law and equity between parties, either of which shall be resident or found within the District of Columbia and which involve an amount in controversy, exclusive of interest and costs, in excess of \$3,000.

6. This action arises under *Sections 27 and 36* of Title 12 of the United States Code, commonly referred to as the National Banking Act, and under other provisions of federal law found in *Title 12 U.S.C. § 1841, et seq.*, commonly referred to as the Bank Holding Company Act. As hereinabove and hereinafter set forth, plaintiffs are all engaged in the banking business in the State of Louisiana, where each has a very substantial investment in capital, property, equipment and good will, irreparable damage to which is imminently threatened by action of the defendant proposed and announced to be taken by him arbitrarily in direct contravention of the aforementioned provisions of Federal law and of provisions of the laws of the State of Louisiana to be referred to more specifically hereinbelow.

Plaintiffs pray herein (1) for a declaratory judgment that any issuance by the defendant Comptroller of the Currency of a Certificate of Authority to Commence Banking in the Parish of Jefferson, State of Louisiana to the Whitney National Bank of New Orleans, the Whitney Holding Corporation of New Orleans and/or the Whitney National Bank of Jefferson Parish would be unlawful and void under

Title 12 U.S.C. § 36 and Title 12 U.S.C. § 1841, et seq., and would constitute an unlawful, arbitrary abuse of discretion and authority in violation of *Title 12 U.S.C. § 27*, and (2) for preliminary and permanent injunctions to enjoin the defendant Comptroller of the Currency from issuing to the said Whitney National Bank of New Orleans, the Whitney Holding Corporation of New Orleans and/or the Whitney National Bank of Jefferson Parish any Certificate or Certificates of Authority to commence banking business in the Parish of Jefferson, State of Louisiana.

7. Heretofore, and for a long period of years extending back approximately 79 years, the aforesaid Whitney National Bank of New Orleans has operated banking offices and facilities wholly within the City of New Orleans, Parish of Orleans, State of Louisiana; and said bank presently conducts such operations in the Parish of Orleans under a certificate or certificates issued to it by the Comptroller of the Currency under the National Banking Act (*Title 12 U.S.C. § 21, et seq.*). The said Whitney National Bank of New Orleans is by far the largest banking institution in the City of New Orleans and the State of Louisiana, and is one of the largest banks in the entire southern portion of the United States. On June 30, 1961, the said bank held approximately 39% of the total deposits in all banks in the Parish of Orleans, State of Louisiana, and 44% of all deposits of individuals, partnerships and corporations, albeit there are numerous other State and National banks with offices, banking facilities and branches throughout the said Parish.

In addition, while the said Whitney Bank holds and has maintained over the years a dominant position over all of the other banks combined in the City of New Orleans (Parish of Orleans), it has also managed to accumulate and hold in its banking facilities, *located in New Orleans (Parish of Orleans)*, deposits of individuals, partnerships and corporations *emanating from the East Bank of the Mississippi River in Jefferson Parish, Louisiana, (a parish or county beyond the limits of Orleans)*, in an aggregate amount exceeding 30% of all such deposits held by all banks having head banking offices and facilities in the very same East Bank area of said Jefferson Parish, Louisiana.

8. Under long standing provisions of the National Banking Act, national banks, such as Whitney National Bank, historically and steadfastly have been prohibited by law

from opening branches or additional banking offices or facilities in any county, parish or city, *other than that in which its main office or banking facilities are located*, unless State banks, i.e., banks chartered under the law of the State in which both types of banks (State and National), operate, are likewise authorized by State law so to expand. In this connection, *Title 12 U.S.C. § 63* provides in pertinent part:

"Branch Banks

"The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks . . .

"(e) No branch of any national banking association shall be established . . . without first obtaining the consent and approval of the Comptroller of the Currency.

"(f) The term 'branch' as used in this section SHALL BE HELD to include *any branch bank, branch office, branch agency, additional office, or any branch place of business* located in any State . . . at which deposits are received, or checks paid, or money lent."—(Emphasis supplied.)

Moreover, *Title 12 U.S.C. § 27*, entitled "*Certificate of Authority to commence banking*", provides that before granting any certificate to any national bank authorizing the commencement of business at any location, the Comp-

troller shall determine whether such bank has complied with all the provisions required to be complied with before commencing the business of banking", and said section of the National Banking Act then provides:

"But the Comptroller may withhold from an association his certificate authorizing the commencement of business, *whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter.*" (Emphasis supplied.)

9. The laws of the State of Louisiana *do not* authorize State Banks to establish, operate and expand new branch or additional banking facilities to any point within the State. On the contrary, the statutes of Louisiana (*La. Rev. Stat. 6:54, 328*), as written and as historically applied by the Louisiana Banking Commissioner, expressly prohibit any bank with more than \$100,000. capital from opening a branch or an additional banking facility in any parish (i.e., county), beyond the parish in which its main office is located, if another bank is already located and operating in the parish into which the large bank would like to expand. Plaintiff, Merchants Trust and Savings Bank, and others are already located and operating in Jefferson Parish, Louisiana, and have invested large amounts of capital in their facilities so located in reliance upon said protections of the law.

10. Upon information and belief, at all times hereinafter mentioned, the existence and contents of the above referred to provisions of the National Banking Act and the laws of Louisiana were and continue to be well known to defendant herein, the Comptroller of the Currency, by his predecessor in office, and to the management of the aforementioned Whitney National Bank of New Orleans.

11. Upon information and belief, heretofore and in or about 1959 or earlier, and in the face of complete knowledge of the aforementioned federal and state statutory prohibitions, the management of the Whitney National Bank of New Orleans commenced to consider and study ways and means whereby the said Whitney National Bank might attempt to evade and circumvent the said federal and state statutes involved, and proceed to locate and operate addi-

tional new branch bank facilities beyond the limits of the Parish of Orleans and within that part of Jefferson Parish on the East Bank of the Mississippi River wherein plaintiff, Merchants Trust and Savings Bank, among others, had already invested very large sums of capital and had established and were operating, and had been developing over the years, under authority issued by the State of Louisiana, extensive and complete banking facilities.

12. Finally, after giving full consideration to various legal maneuvers which might be attempted so as to gain the required Certificate of Authority from the Comptroller of the Currency in the District of Columbia for the opening of one or more such new branch bank facilities in Jefferson Parish, the management of the Whitney National Bank of New Orleans fashioned and adopted the following device as a basis for an attempt at evasion and circumvention of the said federal and state statutes, and application was made to the Comptroller of the Currency, under the very same federal statute involved, for approval and issuance of a certificate whereby, after all of the proposed evasion maneuvers were completed, would authorize Whitney National Bank of New Orleans to open and operate new branch bank facilities in Jefferson Parish, Louisiana. The proposed method for evading the laws of the United States and the State of Louisiana prohibiting branch bank facilities beyond parish lines is as follows:

Step 1. Whitney National Bank would cause to be organized a Louisiana corporation called "Whitney Holding Corporation". The sole initial capital investment in this corporation would be \$350,000.—every cent of which (other than directors' qualifying shares) was to come from the capital funds of the Whitney National Bank. In return for this investment, the Whitney Bank was to receive 5,600 shares of stock of Whitney Holding. These 5,600 shares would be distributed to the stockholders of the Bank as a stock dividend (1/20 share in the Holding Corporation for each share held by the stockholder in the Bank).

Step 2. Whitney National Bank would cause to be organized a "phantom" or non-operating bank in the City of New Orleans, Parish of New Orleans, under the name "Crescent City National Bank", to which the Comptroller of the Currency would issue a National banking charter with full

knowledge that said Crescent City National Bank was created solely for the purpose of merging the existing Whitney into said non-operating bank. The Holding Corporation would then invest the entire \$350,000. it received from Whitney National Bank in this new "phantom organization", in exchange for all of its authorized stock (112,000 shares, with par value of \$2.50).

Step 3. The "phantom bank", Crescent, would then consolidate or merge *by written agreement* with Whitney National Bank. The stock in "Crescent" would continue to be held by the Whitney Holding Corporation, but then the Holding Corporation would exchange the balance of its stock with the stockholders in Whitney National Bank, *so that the Holding Corporation would then own all of the stock in Whitney National Bank and, in turn, the stockholders in Whitney National Bank would then own all of the stock in Whitney Holding Corporation.*

Step 4. Then, when this conduct process of evasion had been completed, Whitney National Bank would provide an additional \$650,000. from its capital account to Whitney Holding Corporation, which funds would be used by the Holding Corporation to create the branch bank in Jefferson Parish to be called Whitney National Bank of Jefferson Parish. All stock in the branch bank, so organized, would be held by the Holding Corporation, and the branch would commence business, with \$650,000 in capital supplied directly by the present bank in Orleans Parish, having completely contravened and evaded the prohibiting statutes.

13. Plaintiffs assert that the aforementioned scheme for evasion of federal and state banking laws is not only in direct violation of the letter and intent of *Title 12 U.S.C. § 36*, but it is also in violation of the intent of the following provisions of the Bank Holding Company Act, *Title 12 U.S.C. § 1841, et seq.*:

(i) *Title 12 U.S.C. § 1845*, which provides:

"(a) From and after May 9, 1956, it shall be unlawful for a bank—

"(1) to invest any of its funds in the capital stock, bonds, debentures, or other obligations of a bank holding company of which it is a subsidiary, or of any other subsidiary of such bank holding company. . . .

“(2) to make any loan, discount or extension of credit to a bank holding company of which it is a subsidiary of such bank holding company. . . .”

As alleged in Paragraph 13 of this complaint, the plan of the Whitney National Bank, a proposed subsidiary of the Whitney Holding Corporation, involves the investment (or extension of credit), of first \$350,000 and then \$650,000, or a total of \$1,000,000 of the funds of the Whitney National Bank of New Orleans in the capital stock of a bank holding company of which it is a subsidiary.

(ii) *Title 12 U.S.C. § 1846*, which provides:

“*Reservation of rights to States*—The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to *banks*, bank holding companies, and subsidiaries thereof.” (Emphasis supplied.)

The entire purpose of the instant scheme or device involving the establishment of Whitney Holding Corporation and the Holding Company's establishment of a bank in Jefferson Parish, was to prevent, evade and circumvent the State of Louisiana's historic power and statutory jurisdiction to prevent large banks, such as Whitney National Bank of New Orleans, from expanding across parish or county lines to open branches in a new parish or county in competition with smaller state banks already conducting a banking business in the latter parish or county, and thus, such device for evasion of the law was patently in contravention of the last mentioned provisions of the Bank Holding Company Act.

14. In spite of the foregoing, and after creating the corporate shells and devices required to effectuate the aforementioned evasion of the laws prohibiting branch banking across parish lines, Whitney National Bank of New Orleans, in company with the newly created Whitney Holding Corporation, applied to defendant herein, the Comptroller of the Currency, for approval of the various steps of the device leading to establishment of the branch bank in Jefferson Parish, Louisiana.

15. Upon information and belief, defendant, without hold-

ing hearings or seeking to obtain the views or testimony of any of the plaintiffs herein and after various of the employees and agents of his office conducted *ex parte* conferences and discussions with officers or representatives of the Whitney National Bank of New Orleans, and in spite of the aforementioned long standing prohibitions of federal and state law, approved the formation of the proposed "phantom bank", Crescent City National Bank in New Orleans, and the branch operation of the Whitney National Bank to be known as the Whitney National Bank in Jefferson Parish, but his approval was made subject to the approval of the Board of Governors of the Federal Reserve System to the acquisition of the shares in these two banks by the Whitney Holding Corporation.

16. Upon information and belief, the newly created Whitney Holding Corporation thereupon made application to the Federal Reserve Board for approval of such acquisition of shares; and upon receipt thereof, and in accordance with the provisions of *Title 12 U.S.C. § 1842(b)*, said Board gave notice of such application to defendant, the Comptroller of the Currency, and asked defendant to submit to the Board his views upon the lawfulness and desirability of the matters proposed.

17. Upon information and belief, defendant, the Comptroller of the Currency, charged with full knowledge of the aforementioned prohibitions and restrictions of the National Banking Act and of the laws of the State of Louisiana and of the Bank Holding Company Act and possessed of knowledge of the basic intent and purpose of the Whitney National Bank, by means of the device proposed in such application, to evade such laws, nevertheless made no effort and took no step to disapprove such application in accordance with the provisions of said *Title 12 U.S.C. § 1842(b)*. On the contrary, the said Comptroller of the Currency, upon information and belief, notified the Board that he favored the plans and proposals of the applicant and recommended approval of same.

Upon information and belief, this action on the part of defendant Comptroller of the Currency caused the Federal Reserve Board to forego the holding of a formal, statutory hearing on the application, as provided in *Title 12 U.S.C. § 1842(b)*, and enabled the President of the aforementioned Whitney National Bank of New Orleans and

Whitney Holding Corporation to make the following representations to the Board in support of the application:

"Under present laws in our State, the Whitney is not permitted to establish branches outside the Parish of Orleans. . . .

"The management of the Whitney National Bank has been studying and weighing alternative methods of entering Jefferson Parish to serve our present customers who have moved their plants there, or who have gone there to live and to participate in the further growth of that area. . . .

"The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution, provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company.

"The Comptroller of the Currency has concurred in a program which has the effect of putting the ownership of the present Whitney National Bank stock into the Whitney Holding Corporation, through this Crescent City National Bank that was mentioned, and to the establishment of the Whitney National Bank in Jefferson Parish with funds from the present Whitney National Bank, the stock in which would be also owned by the holding company." (Emphasis supplied.)

18. On the basis of this record, the Federal Reserve Board, on May 3, 1962, issued an order approving the application of Whitney Holding Corporation to acquire the shares in the Whitney National Bank in New Orleans and its new branch in Jefferson Parish, Louisiana.

Plaintiffs herein are petitioning the Federal Reserve Board for reconsideration of this order and are requesting the Board to vacate its said order and to schedule this matter for formal hearing under the Bank Holding Company Act. Plaintiffs represent to the Court that, if the Board fails to grant the relief requested, plaintiffs intend to apply for review of said Board's order in the United States Court of Appeals for the Fifth Circuit, as provided by Title 12 U.S.C. § 1848, such application to be

filed within 60 days of May 3, 1962, the date upon which the said Order was entered.

19. Thereafter, and under date of May 18, 1962, defendant herein, the Comptroller of the Currency, entered his formal approval of the consolidation of Whitney National Bank of New Orleans with the Crescent City National Bank, effective May 24, 1962, and is presently considering almost immediate issuance of his Certificate or Certificates of Authority which will enable the new branch bank facility to open and commence to operate a banking business at one or more locations in Jefferson Parish under the name of Whitney National Bank of Jefferson Parish.

20. Plaintiffs verily believe that defendant, unless enjoined, will, without any notice of intention to plaintiffs, issue in the name of Whitney National Bank of New Orleans, or Whitney Holding Corporation, or Whitney National Bank of Jefferson Parish the aforesaid Certificate or Certificates of Authority, all in contravention of the letter, intent and purposes of *Title 12 U.S.C. §§ 27, 36 and 1841, et seq.*, and that after said Certificate or Certificates are issued as aforesaid, plaintiffs will have no adequate remedy at law, either to compel revocation of same or to prevent the Whitney Bank from so operating in Jefferson Parish.

21. Plaintiffs further allege that the unlawful and arbitrary issuance by defendant of his certificate or certificates, authorizing the Whitney National Bank to open and operate a new branch facility or facilities in Jefferson Parish as aforesaid will cause great and irreparable damage to the banking business of said plaintiffs for the following reasons:

(a) Plaintiff. Bank of New Orleans and Trust Company, a State bank chartered under the laws of Louisiana to conduct a banking business limited to a main office and branches wholly within the Parish of Orleans, has a total capital of approximately \$1,562,500.; total resources of \$62,719,121.; surplus of \$1,437,500. and undivided profits of \$383,892. Under the laws of Louisiana, this plaintiff, a relatively small competitor of the Whitney National Bank of New Orleans in the banking business in the Parish of Orleans (Whitney, for example, is believed to possess undivided profits of approximately \$13,835,000 and \$27,200,-

000 in its surplus account), cannot by law, expand its facilities to open and operate a new branch facility beyond the boundaries of the Parish of Orleans in Jefferson Parish. And, yet, because the Parish of Jefferson is contiguous to the Parish of Orleans, many of said plaintiff's depositors and borrowers in New Orleans are persons and businesses residing and located in Jefferson Parish, who maintain deposits or loan accounts at this plaintiff's offices within the Parish of Orleans. This plaintiff alleges and verily believes that one of the primary purposes of the application of the Whitney National Bank before the defendant for the authority to open and operate new branch facilities in Jefferson Parish is to attempt to divert and appropriate to itself a substantial part of the banking business and services now enjoyed by this plaintiff and other New Orleans State banks similarly situated from sources in Jefferson Parish. Thus, the unlawful issuance of a certificate by defendant to said Whitney National Bank, would cause the plaintiff to suffer severe, irreparable damage, including the loss of customers' business, deposits and consequent loss of profit or net income. Moreover, this plaintiff would be irreparably damaged by the inability to continue to compete with the said Whitney National Bank on an equal footing as far as location of facilities are concerned, and would be prevented by laws of the State of Louisiana, from any appropriate relief or remedy in the premises.

(b) Plaintiff, Merchants Trust and Savings Bank, a State bank chartered under the laws of Louisiana to conduct a banking business limited by law to facilities wholly within the boundaries of the Parish of Jefferson, has capital and resources, surplus and undivided profits approximately as follows:

Capital	\$ 187,500.
Resources	\$7,717,660.
Surplus	\$ 212,500.
Undivided Profits	\$ 62,914.

Said plaintiff is limited by law to conducting a banking business with facilities confined to Jefferson Parish. This plaintiff may not expand into the Parish of Orleans to compete, through branches there, with the Whitney National

Bank for business in that Parish. Thus, being a relatively small banking institution, this plaintiff and others like it in Jefferson Parish must look almost exclusively to banking business and deposits emanating from customers and business firms located in Jefferson Parish. Said plaintiff alleges and verily believes that one of the primary purposes of the application of the Whitney National Bank before the defendant is to attempt to divert and appropriate to itself a substantial part of the banking business and services now enjoyed and developed over a long period of years by this plaintiff from sources on the East Bank of the River in Jefferson Parish. Thus, the unlawful issuance of a certificate by defendant to said Whitney National Bank would cause plaintiff to suffer severe, irreparable damage, loss of customers' business, deposits, and consequent loss of profit or net income. Furthermore, the unlawful granting of such certificate would bring to bear on this small bank, and numerous others in Jefferson Parish like it, new, wholly un contemplated competition from the combined resources, deposits and lending power of the very largest bank in the entire State of Louisiana, and such competition, in contravention of law, will irreparably damage the entire business of all such banks presently doing business in Jefferson Parish.

(c) Plaintiff, Guaranty Bank and Trust Company of Lafayette, Louisiana, is likewise a State bank chartered under the laws of Louisiana to conduct a banking business limited by law to a main office and branches in Lafayette Parish, Louisiana, very near the Parish of Jefferson. This plaintiff's financial investment and resources are as follows:

Capital	\$ 600,000.
Resources	\$23,153,556.
Surplus	\$ 600,000.
Undivided Profits	\$ 1,079,999.

This plaintiff alleges and verily believes that one of the primary purposes of the application of the Whitney National Bank before the defendant is to destroy the statutory prohibitions, both federal and state, which have prevented the said Whitney Bank, the largest in the State of Louisiana, from expanding throughout various parishes in the State of Louisiana and from opening branch facilities,

through the medium of a holding company, at different points, including places possibly in the parish in which this plaintiff has conducted and developed its business. Any such expansion would bring to bear upon plaintiff, a very small banking organization by comparison, destructive competition backed by the combined capital, resources and lending power and authority of the Whitney National Bank and its various branch facilities. Under the laws of the State of Louisiana, plaintiff could not compete and meet any resulting loss of business by opening branches of its own in some other parish in the State. Thus, plaintiff would likewise suffer irreparable damage from the unlawful issuance of a certificate by the defendant herein.

(d) All of the plaintiffs herein allege and verily believe that there already exist in Jefferson Parish, Louisiana ample, modern and complete banking facilities, sufficient to serve the public interest, convenience and necessity in that Parish, and that the investments in such facilities, made in reliance upon the protective provisions of federal and State law, would be irreparably damaged if defendant were unlawfully to permit the Whitney National Bank to establish new branch facilities therein.

WHEREFORE, plaintiffs pray (a) that this Court enter judgment herein declaring that the defendant Comptroller of the Currency is prohibited by Title 12 United States Code, Sections 27, 36 and 1841, et seq. from issuing to the Whitney National Bank, and/or the Whitney Holding Corporation and/or the Whitney National Bank of Jefferson Parish, a Certificate or Certificates of Authority authorizing them or any of them to establish new branch bank facilities in the name of the Whitney National Bank or otherwise in Jefferson Parish, State of Louisiana; and, (b) in order to prevent immediate and irreparable injury, loss and damage to plaintiffs herein, that this Court grant a preliminary injunction and permanent injunction herein, restraining and enjoining defendant, the Comptroller of the Currency, from issuing to the Whitney National Bank, also known by the name of Crescent City National Bank, the Whitney Holding Corporation and/or the Whitney National Bank of Jefferson Parish, a Certificate or Certificates of Authority authorizing the establishment of new branch bank facilities by them or any of them in the name of Whitney Na-

tional Bank or otherwise in Jefferson Parish, State of Louisiana, and, (c) that this Court grant such other and further relief as may seem just and proper and as the exigencies of the case may demand.

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JAMES W. BEAN, Esq.,
Bean & Rush, Esqs.,
Lafayette, Louisiana.

Of Counsel

Filed June 9, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION

Come now the plaintiffs herein by undersigned counsel and respectfully move this Court to grant a preliminary injunction restraining the defendant from issuing his Certificate or Certificates authorizing the establishment and operation by the Whitney National Bank of New Orleans, the Whitney Holding Corporation of New Orleans, Louisi-

ana and/or the Whitney National Bank of Jefferson Parish, Louisiana, of a new branch bank or banks within Jefferson Parish, State of Louisiana; and, in support of such motion, direct the Court's attention to the Complaint herein; the Affidavit of plaintiffs' counsel, submitted in support of this Motion and the Motion for Temporary Restraining Order herein; and the points and authorities filed simultaneously herewith.

WHEREFORE, plaintiffs pray the Court to hear this motion promptly and to issue a preliminary injunction restraining defendant from issuing his Certificate or Certificates above described, pending the hearing and determination of the complaint herein.

EDWARD L. MERRIGAN,
Attorney for Plaintiffs,
425 13th St., N.W.,
Washington, D.C.

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Of Counsel.

Filed June 9, 1962

UNITED STATES DISTRICT COURT, DISTRICT OF COLUMBIA
Civil Action No. —

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

CITY OF WASHINGTON,
District of Columbia, ss:

Edward L. Merrigan, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before the District Court of the United States for the District of Columbia, and I am the attorney for plaintiffs in this action. This affidavit is submitted in support of plaintiffs' motion for a preliminary injunction herein.

2. At the request and direction of the plaintiff banks herein, I have filed a Complaint for Declaratory Judgment and Injunction, the purpose of which is to restrain and enjoin defendant, the Comptroller of the Currency, from issuing a Certificate or Certificates authorizing the establishment and operation of one or more new branch banks of the Whitney National Bank of New Orleans in Jefferson Parish, Louisiana. At the same time, I filed a Motion for Preliminary Injunction to restrain the defendant from issuing any such certificate or certificates during the pendency of this action.

3. The basis of the aforesaid Complaint and Motions is that defendant Comptroller of the Currency is prohibited by Title 12 United States Code, Sections 36 and 1841, et seq. from authorizing the direct or indirect establishment of new branch bank or banks by the aforesaid Whitney National Bank in Jefferson Parish, Louisiana, and that said defendant's announced approval of such proposal and his announced purpose and plan to issue a Certificate or Certificates authorizing the establishment and operation of such new branch bank or banks in Jefferson Parish, Louisiana constitutes arbitrary and wilful abuses of his discretion in violation of the provisions of Title 12 United States Code, Section 27.

4. On October 27, 1961, the President of the Whitney National Bank of New Orleans, Mr. Keehn W. Berry, wrote

a letter to the shareholders of the said bank, announcing that the bank "had been working for some time to obtain the necessary approval of the Comptroller of the Currency . . . to the steps required to create a Holding Company into which the stock of the Whitney National Bank would be converted and that we then contemplated moving funds from the Whitney National Bank of New Orleans into the Holding Company for the establishment of a Whitney National Bank in Jefferson Parish." He then stated that "we now have the concurrence of the Comptroller of the Currency" to the initial steps of the proposed plan, and he proceeded to outline in detail the subsequent steps required to complete the maneuvers and camouflages adopted by the Bank in order to gain the defendant's final approval and certificate for establishment and operation of the new branch bank or banks. This letter concluded as follows:

"Insofar as the operation in New Orleans is concerned, this program is simply a corporate reorganization of the present Whitney National Bank of New Orleans. It contemplates no changes in personnel, management, or directorship. It contemplates no changes in the facilities of the bank in New Orleans. It contemplates no changes in the ownership or proportional shareholdings."

"The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish. . . ."

A copy of the said letter of October 27, 1961 is annexed hereto, made a part hereof and marked *Exhibit "A"*.

5. Thereafter, and on October 28, 1961, the very same President of the Whitney National Bank of New Orleans again wrote to the Bank's stockholders. In this letter, copy of which is annexed hereto, made a part hereof and marked *Exhibit "B"*, he stated:

"As we have already said to you, for more than two years we have been studying and weighing alternative methods of our serving our customers who live beyond the city limits or who have built plants or opened offices there. A year ago the Directors of your Bank authorized the officers to proceed to ob-

tain the necessary approval of the Comptroller of the Currency . . . to the action required to create a holding company into which the stock of the Whitney National Bank would be converted and which holding company would create and own in its entirety a new bank to serve that part of Jefferson Parish on the East bank of the Mississippi.

"We are firmly convinced, after careful consideration of the alternatives, that your common ownership of all of the Whitney National Bank of New Orleans stock and all of the stock of a Whitney National Bank in Jefferson Parish by a holding company to be owned by you is the soundest method of pooling all of the deposits of our customers and of our capital funds for their use and for the development of this community. From the depositors' point of view, those in the smaller bank will be assured of the same management which directs the large one without possibility of interruption. They will be assured of access to the large loan limits of the combined banks. They will have the security which arises out of the fact that the large and the small bank have identical ownership as well as management."

6. As alleged in the Complaint herein, Title 12 United States Code, *Section 36(c)(2) prohibits* a national banking association such as Whitney National Bank from establishing and operating new branches at any point within the State of Louisiana beyond the limits of the Parish of Orleans, where its main office is located, *unless*

"such establishment and operation are at the time authorized to State banks by the statute law of the State . . . by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State or State banks."

Section 36(b) then defines "branch" as follows:

"The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State . . . at which deposits are received, or checks paid, or money lent."

Also, as alleged in the complaint, Louisiana law does not grant any authority, express or implied, to State banks to establish or operate branches "at any point within the State". On the contrary, the law of Louisiana prohibits banks with \$100,000. or more in capital from opening so-called "outside branches" beyond the parish (county) lines within which the State bank's main office is located.

Finally, as stated in the Complaint, the Bank Holding Company Act, upon which the said Whitney Bank was apparently pinning its endeavor to evade the restrictions of the "Branch Bank" provisions of the National Banking Act, specifically provides, at *Title 12 United States Code, Section 1846*:

"Reservation of rights to States—

"The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has . . . with respect to banks, bank holding companies, and subsidiaries thereof."

Said Bank Holding Company Act, at *Title 12 U.S.C. § 1845 (a)*, also makes it *unlawful* for a bank to invest any of its funds in the capital stock, or other obligations of a bank holding company of which it is a subsidiary, or of any other subsidiary of such bank holding company". The same section makes it "unlawful for a bank to make a loan, discount or extension of credit to a bank holding company of which it is a subsidiary or to any other subsidiary of such bank holding company".

Exhibit "A" hereto states on its face that Whitney National Bank, as part of the plan before the defendant herein for approval is planning to invest \$350,000. and later, an additional \$650,000. in a bank holding company of which it is to be or is a subsidiary and/or in another subsidiary of such holding company, to wit, the Whitney National Bank's proposed branch in Jefferson Parish, Louisiana.

7. Not only do the foregoing provisions of federal and state law expressly prohibit the direct or indirect establishment and operation of such new branch bank facilities by the Whitney National Bank of New Orleans, but the National Banking Act itself, *Title 12 U.S.C., Section 27* specifically and expressly empowers the defendant herein, the

Comptroller of the Currency, to "withhold from an association his Certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter", which chapter, of course, includes Section 36, referred to hereinabove.

Exhibit "A" hereto states in its very first and second and last paragraphs, that defendant herein has been fully and consistently advised by Whitney National Bank of New Orleans that the entire basic purpose and intent of the proposal laid before defendant for approval was to defeat, circumvent or evade the legitimate objects of the Branch Bank restrictions of Section 36, contained in the National Banking Act, which restrictions, together with the statutes of Louisiana, prevented said bank from opening one or more branches in a new parish, to wit, Jefferson Parish, Louisiana.

8. In spite of the foregoing provisions of law, and in spite of his apparent knowledge of the underlying purposes and designs of the proposals submitted to his office by the Whitney National Bank of New Orleans, the Comptroller of the Currency has proceeded to grant a series of written approvals with reference to each step of such program, and he is now verily believed to be ready to issue momentarily his formal Certificate of Authority under *Title 12 U.S.C. § 27* to authorize final establishment and operation of the unlawful new Jefferson Parish branch facilities of the Whitney National Bank of New Orleans. Under date of May 18, 1962, defendant issued a written decision announcing his approval of further steps in the Whitney's proposal. He refers therein to his approval of prior steps therein on October 2, 1961. A copy of defendant's said decision is annexed hereto, made a part hereof and marked *Exhibit "C"*.

In the meantime, as *Exhibit "D"* hereto recites, defendant has apparently been stating to various banking organizations in other sections of the United States that the restrictions and prohibitions of *Section 36 of Title 12 of the United States Code* are personally objectionable to him and that he is aware of and apparently sympathetic to devices designed to avoid same. Defendant is also reported in said *Exhibit "D"* to have recognized, however, that only the Congress of the United States can lawfully repeal or amend such provisions of law.

9. During the past week, your deponent has been advised verbally by agents and employees of the defendant herein that the defendant "has completed his consideration of the Whitney Bank case and is now ready to issue, without any further proceedings, a certificate authorizing the Whitney National Bank to open in Jefferson Parish, Louisiana". These same agents and employees of defendant stated that the certificate will issue immediately upon the said Whitney's request therefor, and that, without any question at all, the defendant herein intends to issue the certificate.*

10. The Complaint and the Motion for Temporary Restraining Order herein allege, and I verily believe, that after defendant issues his Certificate or Certificates to the Whitney National Bank, as threatened, plaintiffs will have no legal remedy effectively to prevent the establishment and operation of such new branch bank or banks in Jefferson Parish, Louisiana.

11. If defendant is not restrained immediately from issuing his Certificate or Certificates of authority to the said Whitney National Bank of New Orleans, Whitney Holding Corporation, or Whitney National Bank of Jefferson Parish, Louisiana, the said Bank will, as soon as it received defendant's said Certificate or Certificates, open for business and commence operation of one or more branch banks in complete and utter violation, evasion and contravention of both the Federal and State laws referred to hereinabove, all to the irreparable loss, injury and damage to the banking businesses of the plaintiffs, and each of them, as alleged in the Complaint herein, and such issuance by defendant will effectively deprive plaintiffs of any remedy against such unlawful, arbitrary and wilful action of the defendant.

s/ EDWARD L. MERRIGAN.

Sworn to and subscribed before me this 8th day of June, 1962.

s/ ROSE M. DENNIS,
Notary Public.

* On June 8, 1962, however, General Counsel to defendant, when advised this suit would be filed, agreed to withhold the Certificate until this Court acts upon this motion.

Filed June 9, 1962

EXHIBIT "A"

WHITNEY NATIONAL BANK OF NEW ORLEANS

October 27, 1961

Keehn W. Berry
President

TO WHITNEY NATIONAL BANK SHAREHOLDERS:

REORGANIZATION PROGRAM

Under date of July 17, 1961, I explained to you that we had been working for some time to obtain the necessary approval of the Comptroller of the Currency and the Federal Reserve Board to the steps required to create a Holding Company into which the stock of the Whitney National Bank would be converted and that we then contemplated moving funds from the Whitney National Bank of New Orleans into the Holding Company for the establishment of a Whitney National Bank in Jefferson Parish.

We now have the concurrence of the Comptroller of the Currency to the establishment of a Crescent City National Bank with a capital of \$280,000 and a surplus of \$56,000 and paid in undivided profits of \$14,000, or a total capitalization of the Crescent City National Bank of \$350,000. The steps needed to consummate the change in our capital structure will be as follows:

1. We propose to put \$350,000 of the capital funds of the Whitney National Bank into a Louisiana business corporation under the title—"WHITNEY HOLDING CORPORATION". The Whitney Holding Corporation will have an authorized capital of 1,120,000 shares of no par value stock. 5,600 of these shares will be issued to the Whitney National Bank of New Orleans for the \$350,000. The Bank will immediately distribute these shares to all of its shareholders on the basis of 1/20th of one share for each share of the 112,000 shares of the Whitney National Bank stock outstanding.
2. The Whitney Holding Corporation will cause the or-

ganization of the Crescent City National Bank contributing \$280,000 to capital, \$56,000 to surplus, and \$14,000 to undivided profits, and Whitney Holding Corporation will receive for that all of the authorized stock of Crescent City National Bank, being 112,000 shares of \$2.50 par value.

3. Crescent City National Bank will enter into a consolidation agreement with the Whitney National Bank of New Orleans. Whitney Holding Corporation will execute an agreement which will be a part of the consolidation agreement. The consolidation agreement will provide for consolidation under national banking law as follows:
 - a. All of the stock of the Crescent City National Bank will be retained by Whitney Holding Corporation except qualifying shares which will be sold to directors for cash.
 - b. Whitney National Bank shareholders will surrender all shares which will be cancelled and they will receive 9-19/20 shares of Whitney Holding Corporation for each share held. These shares, together with the dividend described in Section 1 above, will give each present Whitney shareholder, ten shares of Whitney Holding Corporation stock for each share of Whitney Bank stock now held.
 - c. All assets and liabilities of Whitney National Bank of New Orleans will be consolidated into the Crescent City National Bank under the Charter of the Crescent City National Bank and under the name of the Whitney National Bank of New Orleans. The par value of the stock of Crescent City National Bank will be simultaneously increased to \$25.00 per share so that the capital structure of the new bank will be the same as that of the old.
 - d. Dissenting shareholders of the Whitney National Bank of New Orleans will be entitled to a cash payment of the appraised value of the shares as provided by Federal Bank Law. In accordance with the same law, shares of Whitney Holding Corporation representing dissenting shareholders will be sold at public auction and the proceeds returned to the capital funds of Crescent City National Bank to the extent of funds used to pay the dissenting shareholders.

4. Upon appropriate notice and publication, the consolidation agreement will be submitted for approval by the shareholders of Whitney National Bank of New Orleans and shall become effective only upon the affirmative vote of not less than 2/3rds of the outstanding stock.
5. Upon completion of the consolidation Whitney Holding Corporation will own all of the stock, except directors qualifying shares, of the Crescent City National Bank (to be named Whitney National Bank of New Orleans). The outstanding shares of Whitney Holding Corporation will be 1,120,000 shares owned by all of the present Whitney Bank stockholders proportionately, except for dissenting shareholders.
6. The Crescent City National Bank (to be named Whitney National Bank of New Orleans) will provide \$650,000.00 to Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish, receiving all stock therefor, being 20,000 shares having a \$25.00 par value. The initial capital structure will be \$500,000 capital, \$100,000 surplus, and \$60,000 undivided profits. Whitney Holding Corporation will immediately sell to directors qualifying shares for cash.
7. The Whitney Holding Corporation will register under and operate in accordance with the Bank Holding Company Act of 1956 and other applicable laws, under which it can acquire no additional banks without approval of the Board of Governors of the Federal Reserve. There are no present plans for additional acquisitions.

Insofar as the operation in New Orleans is concerned, this program is simply a corporate reorganization of the present Whitney National Bank of New Orleans. It contemplates no changes in personnel, management, or directorship. It contemplates no changes in the facilities of the bank in New Orleans. It contemplates no changes in the ownership or proportional shareholdings.

The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish to protect Whitney's competitive position in that area into which many of Whitney's present customers have moved.

This detailed outline of the main features of the con-

solidation program is sent to you in accordance with the prescribed procedure in the regulations of the Comptroller of the Currency.

Sincerely

K. W. BERRY,
President.

KWB:p.

Filed June 9, 1962

EXHIBIT B

WHITNEY NATIONAL BANK OF NEW ORLEANS

October 28, 1961

Keehn W. Berry
President

TO WHITNEY NATIONAL BANK SHAREHOLDERS:

You are hereby notified of a Special Shareholders' Meeting of the Whitney National Bank called by the Board of Directors to be held on November 29, 1961 at 12 o'clock noon at the offices of the Bank at 228 St. Charles Street, New Orleans, Louisiana.

The purpose of the meeting is to consider and determine by vote whether to ratify and confirm the Whitney Holding Corporation program by consolidating the Whitney National Bank into the Crescent City National Bank in New Orleans under the name of the former, and all matters incidental thereto.

We are enclosing a letter in accordance with the requirements of the United States Comptroller of the Currency which outlines in detail the proposed program. It is important to bear in mind that under the plan all authorized shares of the Whitney Holding Corporation will be distributed to you, the stockholders of the Whitney National Bank, in exchange for your presently held stock. You will then own the same proportionate interest as you now have in the Whitney National Bank in all the assets of the holding corporation, which then obviously includes all of the assets of the present Whitney National Bank. Control of the Holding Corporation management will rest as it should with the holders of a majority of the stock.

As we have already said to you, for more than two years

we have been studying and weighing alternative methods of our serving our customers who live beyond the city limits or who have built plants or opened offices there. A year ago the Directors of your Bank authorized the officers to proceed to obtain the necessary approval of the Comptroller of the Currency and the Federal Reserve Board to the action required to create a holding company into which the stock of the Whitney National Bank would be converted and which holding company would create and own in its entirety a new bank to serve that part of Jefferson Parish on the East bank of the Mississippi.

We are firmly convinced, after careful consideration of the alternatives, that your common ownership of all of Whitney National Bank of New Orleans stock and all of the stock of a Whitney National Bank in Jefferson Parish by a holding company to be owned by you is the soundest method of pooling all of the deposits of our customers and of our capital funds for their use and for the development of this community. From the depositors point of view, those in the smaller bank will be assured of the same management which directs the larger one without possibility of interruption. They will be assured of access to the large loan limits of the combined banks. They will have the security which arises out of the fact that the large and the small bank have identical ownership as well as management.

We therefore elected to use a holding company rather than to get a group of stockholders to form an affiliate in Jefferson Parish. An affiliate by law must depend on ownership of a majority of the stock in the Jefferson Parish bank by Whitney Bank stockholders. Affiliate relationship can be suddenly terminated if stock ownership in the Jefferson Parish bank changes over a period of time until control ceases to be in the stockholders of the large New Orleans bank. The large bank cannot control those changes in stock ownership, and under the law when the control ceases to be in the stockholders of the large bank the two banks cannot have common officers or directors. As we view it, the change of ownership of the stock could be very embarrassing to either or both banks,—even to the extent of having a bank which we no longer control still bearing the name "Whitney National Bank".

Under the holding company approach the relationship is completely owned by the stockholders of the holding com-

pany who will be all the present stockholders of the Whitney National Bank and their successors.

By reason of the common ownership of the two banks in a holding company there can arise no conflict of interest between them as there can between affiliated banks. There will be no minority stockholders to be affected.

From the customer point of view there will be no conflict of interest arising out of the manner in which the customer sees fit to divide his business between the commonly owned banks in the two parishes. He will have the full benefits of a relationship with the large bank and its officers.

Because of the permanent relationship between the large and the smaller bank, the smaller one can operate safely with a smaller capitalization.

The corporate identity of the seventy-eight year old Whitney National Bank with the prestige and asset values inherent therein, is fully preserved under the holding company procedure, as is your undiluted ownership thereof.

Finally, this holding company group broadens banking possibilities for the future from the point of view of our shareholders. Even more important it will give metropolitan New Orleans the soundest form of banking unit which can accumulate and pool banking resources in this community where they can be used to greatest advantage in the further development of the entire area.

For the reasons stated, we strongly recommend that you support your Directors' proposal for the establishment of the Whitney Holding Corporation in accordance with the Plan enclosed herewith. Please sign and return promptly the enclosed proxy whether or not you plan to attend the meeting in person. If you attend, you may still vote in person.

Sincerely yours,

K. W. BERRY,
President.

Filed June 9, 1962

Exhibit "C"

TREASURY DEPARTMENT
Comptroller of the Currency
Washington 25, D. C.

DECISION OF COMPTROLLER OF THE CURRENCY JAMES J. SAXON
ON THE APPLICATION TO CONSOLIDATE WHITNEY NATIONAL
BANK OF NEW ORLEANS, NEW ORLEANS, LOUISIANA, AND
CRESCENT CITY NATIONAL BANK, NEW ORLEANS, LOUISIANA.

STATEMENT

Application has been made to the Comptroller of the Currency for permission to consolidate the Whitney National Bank of New Orleans, New Orleans, Louisiana, and the Crescent City National Bank, New Orleans, Louisiana.

Application had previously been made to this office to organize two new national banks; one, located in New Orleans, to be known as the Crescent City National Bank and the other, located in Jefferson Parish, to be known as the Whitney National Bank in Jefferson Parish. Substantially all of the stock of the new banks would be acquired by the proposed Whitney Holding Corporation.

This office approved the formation of the two banks on October 2, 1961. Subsequently, on May 3, 1962, the Board of Governors of the Federal Reserve System granted approval to the Whitney Holding Corporation to acquire substantially all the shares of these banks.

We find the proposal to consolidate to be in the public interest. The application, therefore, is approved effective on or after May 24, 1962.

JAMES J. SAXON,
Comptroller of the Currency.

Dated: May 18, 1962

Filed June 9, 1962

Federal Law Needed?

Comptroller Saxon Criticized in Illinois for Statements on
Branch Banking

Illinois bankers, the majority of whom have strongly objected to any and all proposals for branch banking in the state, lashed out at Comptroller James J. Saxon last month because of his recent statements concerning federal legislation affecting branch banking.

Critical statements were issued by the president of the Illinois Bankers Association, the IBA's newly elected executive vice president, and by members of various groups as they assembled for annual meetings.

IBA President Jacob W. Myers (pres., Corn Belt Bank, Bloomington) reaffirmed the association's official opposition to branch banking. He stated that the IBA would fight any national legislation that would permit *national* banks to establish branches, and he also said that any effort to legalize branch banking through state legislation also would be strongly opposed.

Mr. Myers, referring specifically to Comptroller Saxon's suggested branching law for national banks, stated:

"This is another example of encroachment by the federal government in the field of state authority.

"The bankers of Illinois bitterly resent this type of federal intervention in an area which has traditionally been a prerogative of the state."

The Comptroller's statements, which have caused him so much embarrassment in his home state (he was an attorney for the First National of Chicago prior to his appointment as Comptroller), were made late in January in connection with proposed "acquisitions" by New York City banks in adjacent counties.

The Comptroller, in denying these acquisitions, stated in a letter of explanation to the board of governors of the Federal Reserve System that he was doing so because he felt that "massive acquisitions" by New York City banks were not the proper ways for them to expand into adjacent counties. He regretted, he said, that the laws of New York,

as well as the laws of many other states, artificially inhibit normal proper and publicly beneficial growth and expansion through branching. Because of these restrictions, he said, banks are forced to resort to "unusual means in order to some way accommodate banking growth and expansion."

Under these circumstances, he said, "we believe it to be imperative that the Congress promptly be asked to amend Section 36 of the National Bank Act relating to branches so as to liberalize substantially the present authority and thereby also to develop a more consistent statutory policy in respect to branching in all of the states."

The Comptroller also stated "The Bank Holding Company Act should also be amended in at least two major respects. (a) To make clear that this Act supersedes *all state statutes* now or hereafter in force, and (b) to eliminate exemptions presently in the Act so as . . . to assure that no organization owning banks is free of regulation pursuant to the Act as is presently the case."

Roland Blaha, the IBA's new executive vice president, stated that he was strongly opposed to the Comptroller's proposal on the grounds that it would have the effect of superseding the constitution of the state of Illinois. The authority of the state legislature would be by-passed, he said, and a peoples' referendum on the problem would be meaningless.

If the Comptroller's recommendations should be enacted into law, said Mr. Blaha, who had served as Illinois's supervisor of banks before accepting his new post, then national banks could establish branches in Illinois, but it would be 1965 before state banks in Illinois could be placed on an equal footing.

A statement issued by James C. Downs, chairman of the Illinois County for Branch Banking, supported Mr. Blaha's stand on the Comptroller's proposal.

Although the council would continue to work for branch banking legislation in Illinois, Mr. Downs stated that "we feel that such action should be taken at the state level. Our own state legislators should no longer delay," he said, "in taking the initiative *in advance of federal action* so that the people of Illinois may make their *own* decision in a state-wide referendum."

The council has been advocating limited branch banking

for the state, permitting any bank to establish branches within 15 miles of its home community, but not within one mile of an existing bank.

IBA members at group meetings also reaffirmed the association's position on branch banking and adopted resolutions criticizing the Comptroller's proposal. Such a proposal, they said, was an "usurpation of the laws of the state of Illinois."

The IBA position also was enthusiastically endorsed by J. Ross Humphreys, who is scheduled to succeed Mr. Myers as IBA president next month. Said Mr. Humphreys, who is president of Chicago's Central National Bank:

"Such an action would completely ignore our state law and void certain provisions of our state constitution.

"The citizens of Illinois, by public referendum in 1924, voted to outlaw branch banking, and efforts in the last two sessions of our state legislature to legalize branch banking have been overwhelmingly defeated."

NEW YORK—The Bank of New York promoted five officers and appointed four new officers March 12. They are Morgan E. McMonegal, advanced to assistant vice president; George W. Scott and Harold G. Wilson, to trust officers; Joseph A. Agolia, to assistant trust officer; William J. Caird, to assistant comptroller; Donald M. Long and Wesley V. Taylor, to assistant secretaries; Walter H. Cushman, to manager, trust operations; and James G. Davine, to manager, securities.

In finance

New 'branch banking' battle flares, as Oklahoma issue goes to Fed.

A battle over "branch banking"—with overtones of national significance—flared up this week in Oklahoma. The state has a ban on branching, with the exception of so-called banking "facilities" within 1,000 ft. of a main office. But First National Bank & Trust Co., Oklahoma City's largest bank, has applied to the Federal Reserve Board for permission to get around the law by setting up a bank holding company. Fed. hearings are slated to begin June 5.

First National's partner in the transaction is a tiny bank in the southeastern corner of the state, Idabel National Bank, which has only about \$5-million in assets. Oklahoma

bankers say that a green light for First National would touch off a flood of other holding company applications, including several from banks now bitterly opposed to First National's deal. First National itself makes no secret of its desire to build a statewide holding company system.

The issue has national importance because of the Fed's apparent tendency to override state laws in ruling on bank expansions in New York and in Louisiana [BW May 12 '62 p. 32]. In the latter case, the Fed allowed Whitney National Bank, largest in New Orleans, to expand into a neighboring parish through the holding company route, despite a state ban on branching.

Meanwhile, the celebrated dispute between the Justice Dept. and two Philadelphia banks. Philadelphia National and Girard Trust Corn Exchange—which want to merge to form the city's largest bank—moved into the Supreme Court. For the first time, the court will be asked to spell out just how the Sherman and Clayton Acts apply to banking.

Great Northern Paper pledges help to Georgia pulp and paper group

In 1957, a group of back-country Georgia bankers and landowners set out to put themselves into the pulp and paper business.

This week, after a five-year campaign in which roughly \$22-million in stock was sold door-to-door across the state, the promoters were close to success—and had some big profits to show for it. They had one of the nation's most highly automated kraft linerboard paper mills well under construction, a pledge of \$15-million in new equity from Great Northern Paper Co., plus assurance of another \$25-million in long-term debt from institutional lenders.

The idea of Southern Land, Timber & Pulp Corp. was to put some land into a company, raise money to buy more timberland, and provide pulp to the booming Southeastern paper market. Says Pres. John J. Neely Sr. "We didn't think we could raise money for a mill—it just snowballed." The company now has 150,000 acres of land, of which only 25,000 acres were contributed by the original promoters.

Southern Land shares were sold intrastate by Forestry Service, Inc., a company that Neely controls. Shares were sold partly on an installment basis—with up to 36 months

to pay. Of the \$22-million stock sale some \$6.6-million is still due the company. Forestry Service, which also has a contract to manage Southern Land for 15% of its profits, took in about \$3.6-million in commissions on the sale of securities. The Securities & Exchange Commission now says that some of the shares may have been sold outside the state so the company is registering to clear up any possible taint.

Southern Land at first tried to promote a \$45-million tax-exempt bond issue by Early County, Ga., which would have built the mill and leased it to Southern Land. But the issue didn't sell, and Great Northern then entered the picture. GN agreed to put up \$15-million in equity, and, in return, received half the project. Maine-based Great Northern now wholly in printing papers, gets product diversification by its move into linerboard, and geographic spread as well.

Sale and leaseback of buildings ups banks' lending power \$250-million

Banks around the country are swamping Marine Midland Corp., New York's big 11-bank holding company, with requests for details on a sale-leaseback deal that expanded its lending potential by nearly \$250-million, while adding only \$10-million in new capital.

Marine Midland sold about \$28.8-million of its banking properties to a wholly owned subsidiary set up for that purpose, and then leased them back. It financed the entire transaction through long-term borrowing from a syndicate of 23 lending institutions, including the Ford Foundation. In addition, the lenders have pledged another \$8.2-million to finance future sale-leaseback deals.

On its books, the holding company cleared \$10-million—the difference between book value and selling price—and counted this as additional capital. The big gain, though, came in freeing from restriction the capital it had invested in real estate: The Federal Reserve doesn't recognize such capital in determining a bank's lending potential. But now the full \$30-million received for sale of the real estate is available as a lending base, and applying a yardstick of 8 to 1—loans to capital—Marine Midland figures it has added nearly \$250-million to its lending capacity.

The deal is similar to, but a lot more complicated than the sale-leaseback deal of Cleveland's Union Commerce Bank

last year [BW Nov. 11 '61 p. 117]. Marine Midland's officers, in fact, met twice a week for two years working it out, and over 6,500 signatures were needed for the final documents. But indications are it will continue sale-lease-back deals—both on existing properties and on any new unit bank properties it might acquire. All told, Marine Midland may sell another \$20-million in properties this way over the next few years.

Filed June 19, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION OF WHITNEY NATIONAL BANK IN JEFFERSON PARISH
TO INTERVENE AS A DEFENDANT

Whitney National Bank in Jefferson Parish respectfully moves the Court pursuant to Rule 24 of the Federal Rules of Civil Procedure for leave to intervene as a defendant in this action, in order to assert the defenses in its proposed answer to the plaintiffs' complaint, a copy of which is hereto attached. The grounds for this motion are that:

(1) The relief sought by plaintiffs in this action is a judgment declaring that defendant is prohibited by law from issuing, and an order enjoining him from issuing, "to the Whitney National Bank, and/or the Whitney Holding Corporation and/or the Whitney National Bank of Jefferson Parish, a Certificate or Certificates of Authority authorizing them or any of them to establish new branch bank facilities in the name of Whitney National Bank or otherwise in Jefferson Parish, State of Louisiana." Insofar as plaintiffs might seek to prevent defendant from issuing to Applicant for Intervention a Certificate of Authority to commence business as a national banking association, applicant for intervention has a substantial and direct interest in the subject matter of the action.

(2) The representation of the interest of applicant for intervention may be inadequate, and applicant for intervention may be bound by a judgment in this action.

(3) The defenses of the applicant for intervention, as set forth in the attached pleading, and the main action have question of law and fact that are in common.

(4) Intervention by the applicant will not delay or prejudice the adjudication of the rights of the original parties.

Applicant for intervention has noted the pendency of plaintiff's motion for preliminary injunction and will, if granted leave to intervene, file its opposition thereto in due course.

HAMILTON CAROTHERS,
701 Union Trust Building,
Washington 5, D. C.

MALCOLM LOGAN MONROE,
Whitney Building,
New Orleans 12, Louisiana.

June 19, 1962.

Filed June 20, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT

James J. Saxon being duly sworn deposes and says:

1. I am Comptroller of the Currency, duly appointed, qualified and acting as said officer.

2. I have access to and control over all of the records of the Office of the Comptroller of the Currency relating to this matter.

3. The purpose of this affidavit is to place before the court a factual account of the events leading up to the formation of Whitney Holding Corporation, Crescent City National Bank and Whitney National Bank of Jefferson Parish. The complaint in this action has set forth these events in a manner which completely distorts and misinterprets the actions taken in connection with the matter by myself and my predecessor in office, the Honorable Ray

M. Gidney. The following is an account of the steps leading up to the formation of the Whitney National Bank of Jefferson Parish (hereafter referred to as Whitney Jefferson) the opening of which plaintiff seeks to enjoin in this action.

In November of 1960, Mr. Keehn W. Berry, President of Whitney National Bank of New Orleans, (hereafter referred to as Whitney New Orleans) visited Mr. W. M. Taylor, then a Deputy Comptroller of the Currency, and engaged in preliminary discussions concerning the competitive situation of Whitney New Orleans in the City of New Orleans and its surrounding suburbs. Mr. Berry pointed out that a great many of his bank's depositors reside in Jefferson Parish and that there was a great demand from the bank's customers for additional facilities in Jefferson Parish. He pointed out that his largest competitor, National Bank of Commerce in New Orleans, was presently operating a bank and three branch banks in Jefferson Parish under the name of National Bank of Commerce in Jefferson Parish. This bank was an affiliate of the National Bank of Commerce in New Orleans and was controlled by the same stockholders with an interlocking Board of Directors and Executive Officers. See Statement of Condition attached. (Exhibit 1) Mr. Berry returned in June of 1961, bringing with him Mr. Malcolm L. Monroe, Director and Attorney for the bank, and extended discussions were held with Mr. Gidney, Mr. Taylor and members of the Comptroller's legal staff. He further pointed out that another competitor was operating on both sides of Jefferson Parish lines by means of separate banks under common ownership and control. He cited the case of one of the plaintiffs in this very action, Merchants Trust and Savings Bank and the American National Bank of Louisiana, both of which banks he alleged were controlled by Mr. Louis Roussel by means of controlling stock interests. See the affidavit of Mr. James J. Gilly dated June 16, 1962, submitted in opposition to this motion.

In view of the fact that their competitors, by means of these affiliate banks, had expanded into Jefferson Parish, the Whitney National wished to explore with the Comptroller whatever legal means were available for a like expansion into this growing area, which needs additional banking facilities. The formation of an affiliate bank was discussed and the formation of a holding company was also

discussed. The bank management felt that a holding company which would own 100% of the stock of both the old bank and the new bank would be preferable to the formation of an affiliate of which the controlling stock would be held by the same persons who control Whitney New Orleans, but which, in view of the wide stock distribution of Whitney New Orleans, would invariably have a minority of stockholders who did not own stock in both banks. The existence of the minority stock interest in each bank, which did not hold corresponding shares in the other, was considered by the Whitney management to be an undesirable situation because it could conceivably hamper the most efficient and effective day-to-day operation of the two banks. Since the same group would be managing both banks, it was thought that situations could arise in which it would be impossible for the interests of two different groups of minority stockholders to be fully protected. For this reason, the Whitney management, as was their right and prerogative elected to use a holding company for the purpose of establishing a new bank in Jefferson Parish.

At all times the applicable Louisiana statutes forbidding the establishment of branch offices across parish lines were fully considered and there was no suggestion that the formation of a holding company would be in any way clandestine or evasive. The stock of Whitney New Orleans was very widely held by a list of over 1,400 stockholders, none of whom owned more than 10% of the outstanding stock. It was evident to everyone concerned that the holding company could not be formed without full and complete approval by the shareholders of Whitney New Orleans and by the Comptroller and the Federal Reserve Board.

4. The Whitney management having decided to submit to its shareholders a proposal to form a holding company and to establish a new bank in Jefferson Parish made the following proposal to the Comptroller: The Whitney management would make application to the Board of Governors of the Federal Reserve System for the approval of the formation of a holding company to be known as Whitney Holding Corporation. Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the voting stock of a proposed new bank, Crescent City National Bank, into which would be consolidated the existing Whitney National Bank of New Orleans, under the charter of Crescent City National Bank, which title would

be changed to Whitney National Bank of New Orleans. By virtue of this procedure, any dissenting stockholders would be fully protected. Under the provisions of 12 U.S.C. 215 (d) any stockholder who dissents to a consolidation has the right to have his shares appraised by disinterested appraisers and to receive the appraised value in cash. It is interesting to note that to date not a single stockholder has asked for appraisal of his shares. Under the terms of the consolidation, shareholders of Whitney National would receive shares of Whitney Holding Corporation in place of their old shares of Whitney National. An application for a new bank to be located in Jefferson Parish and to be called Whitney National Bank of Jefferson Parish would be made to the Comptroller. The stock of this new bank would be entirely owned, with the exception of directors' qualifying shares by Whitney Holding Corporation.

5. The usual full field investigation of the applications was carried out over a period of several months by the Comptroller's examiners. Competitor banks were contacted and their views noted in the investigation reports in accordance with the usual practice.

6. By letters dated October 3, 1961, former Comptroller Gidney gave preliminary approval to the formation of Crescent City National Bank, and the formation of Whitney Jefferson subject to the grant of the approval of the Federal Reserve Board of the formation of the holding company for the purpose of acquiring the new Whitney New Orleans and Whitney Jefferson, as required by the Bank Holding Company Act.

7. Under the provision of Section 3 (b) of the Bank Holding Company Act (12 U.S.C. 1842), the Board was required to solicit the views of the Comptroller on the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of one or more national banks. If any state bank had been involved, the Board would have been required to similarly solicit the views of the State Banking Commission. If the view of the Comptroller or the State Banking Commissioner is negative, the Board is required by Section 1842 to call a public hearing on the application.

8. Under date of April 11, 1961, Comptroller Gidney advised the Board that he had no objections to the application of Whitney Holding Corporation. Although not required to do so by the statutes, the Federal Reserve Board,

pursuant to its rules (Exhibit 2), caused to be published in the Federal Register under date of November 2, 1961, a notice of hearing on the application of Whitney Holding Corporation for prior approval to become a bank holding company and invited anyone interested in said application to appear and testify at such hearing which was to be held on January 17, 1962. A copy of said notice of hearing is attached hereto and marked Exhibit 3. At the hearing Mr. Kechn W. Berry and Mr. Malcolm Monroe testified for the proponents and Mr. Louis J. Roussel, Clem H. Sehrt, and Victor J. Passera, President of the National Bank of Commerce in Jefferson Parish, testified in opposition. A copy of the transcript is attached hereto and marked Exhibit 4.

On May 3, 1962, the Board of Governors rendered its decision and order approving the application of Whitney Holding Corporation for permission to become a bank holding company by acquiring the stock of Crescent City and Whitney Jefferson. In a fourteen-page opinion, the Board of Governors explored the necessity and desirability of the formation of the holding corporation and of the new bank in Jefferson Parish. The statutory factors of the financial history and condition of the holding company and the banks concerned, their prospects, the character of their management, the convenience needs and welfare of the community and area concerned, and whether or not the effect of the acquisition would be to expand the size and extent of the bank holding system involved beyond limits consistent with adequate and sound banking, the public interest and the preservation of competition in the field of banking, all were considered. Of necessity, the Board also considered the question of whether or not the formation of the holding corporation and its acquisition of Whitney Jefferson would be legal in the state of Louisiana. In this connection, the Board reached the following conclusion:

"In this aspect, the pending proposal to establish banking facilities in East Bank through the holding company device is due to the natural and legitimate desire of a bank in an expanding metropolitan area to furnish its services more conveniently to customers situated in a section that, although outside the corporate limits of Orleans Parish, is realistically an integral part of the metropolitan economy. The laws of Louisiana do not prohibit expansion of a banking or-

ganization by this means. In the judgment of the Board, this phase of the proposal is a proper expression of the character of the American business system—in some respects, in fact, it is a matter of economic self-defense—and ought not to be frustrated unless it involves effects significantly detrimental to the public interest.”

A copy of the Board's decision and the dissenting opinion of Governor Robertson is attached hereto and marked Exhibit 5.

9. Previously, on November 29, 1961, the holders of more than two-thirds of the stock of Whitney New Orleans, had approved the entire transaction including the formation of the holding company, the formation of the two new banks, Crescent City and Whitney Jefferson, and the consolidation of Crescent City with Whitney New Orleans. All steps in the transaction had previously been clearly spelled out in a letter to stockholders dated October 27, 1961, a copy of which is attached hereto and marked Exhibit 6.

10. On May 18, 1962, the Comptroller issued his approval to the consolidation of Whitney New Orleans with Crescent City under the title of Whitney National Bank of New Orleans. The final steps for the completion of the formation of Whitney Holding Corporation and the Crescent City National Bank and the consolidation were all accomplished on May 24, 1962, and the new bank in New Orleans commenced business on May 25, 1962.

11. After the completion of the above and on the same day, Whitney Holding Corporation completed the organization of Whitney Jefferson by purchasing all of its stock except directors' qualifying shares in exchange for \$650,000. The Articles of Association and Certificate of Organization had been previously executed. Bylaws were adopted and the directors and officers elected. A permanent location has been purchased and temporary quarters across the street on 4407 Jefferson Highway have been leased. All that remains to be done to enable Whitney Jefferson to commence business is the issuance of the Comptroller's Certificate of Authorization and the opening of its doors.

12. Before issuing his preliminary approval on October 3, 1961, of the organization of Whitney Jefferson, former Comptroller Gidney, in accordance with his statutory duty, considered the character of the management, the proposed

capital structure, the prospects of the new bank, and the other banking factors which must be considered before authorizing a new banking institution. Because of the fact that a holding company was involved, former Comptroller Gidney conditioned his approval upon the authorization of the Federal Reserve Board to the transaction. This consent and authorization having been rendered on May 3, 1962, the deponent's duty is to issue the Certificate of Authority to Whitney Jefferson since the organizers have faithfully executed all steps and fulfilled all requirements necessary for the organization of a new bank. In order that there may be no question about the propriety of his action, the deponent has made an independent review of the merits of the Whitney Jefferson application. Deponent is fully in accord with the conclusions reached by former Comptroller Gidney that all of the banking factors relating to the application are favorable and that the new bank will serve a useful and constructive purpose in the community.

13. Despite the continued statements of the plaintiffs to the contrary, there is no branch bank involved in these proceedings. There has been no request for a branch of any bank. A new affiliate bank for the Whitney National Bank in New Orleans has been approved. With respect to the allegations in the complaint that the prospective business of the plaintiffs from Jefferson Parish will be damaged by the new bank, this must be answered by the observation that the presence in Jefferson Parish of two New Orleans banks, through their affiliates, plaintiff Merchants Bank and Trust Company and the National Bank of Commerce in Jefferson Parish, already has caused such damage, if any to be incurred. To deprive Whitney New Orleans of the right to have an affiliate in Jefferson Parish, would be, in my opinion, to unfairly discriminate against Whitney New Orleans.

14. The plaintiff Guaranty Bank and Trust Company operates five parishes away and will not be in any affected by banking operations in the metropolitan area of New Orleans, including Jefferson Parish.

15. Plaintiffs, in their complaint, have endeavored to create an impression that the former Comptroller and the present Comptroller somehow have engaged in a sinister conspiracy with the Whitney management to evade the law. The entire record in this matter shows that all applications were processed in the normal manner and according to the same rules and policies as many similar applications being

processed during the same period. The charge that the branch banking laws are being evaded is completely without foundation as is conclusively demonstrated by the points and authorities submitted on behalf of the defendant.

/Signed/ JAMES J. SAXON.

Subscribed and sworn to before me, this 20th day of June, 1962.

/Signed/ HELEN CRIST CRAVER.

My Commission Expires Sept. 30, 1966. Seal of Notary.



Filed June 20, 1962
DEFENDANT SAXON EXHIBIT 1

THE NATIONAL BANK
OF COMMERCE
In New Orleans



STATEMENT OF CONDITION
DECEMBER 31, 1961

(Taken from Docket file)

Ex 1

49

50

COMMERCIAL ACCOUNTS

PERSONAL ACCOUNTS

COMMERCIAL LOANS

AUTOMOBILE LOANS

REAL ESTATE MORTGAGE LOANS

PERSONAL LOANS

HOME IMPROVEMENT LOANS

ACCOUNTS RECEIVABLE LOANS

SAVINGS DEPARTMENT

TRUST DEPARTMENT

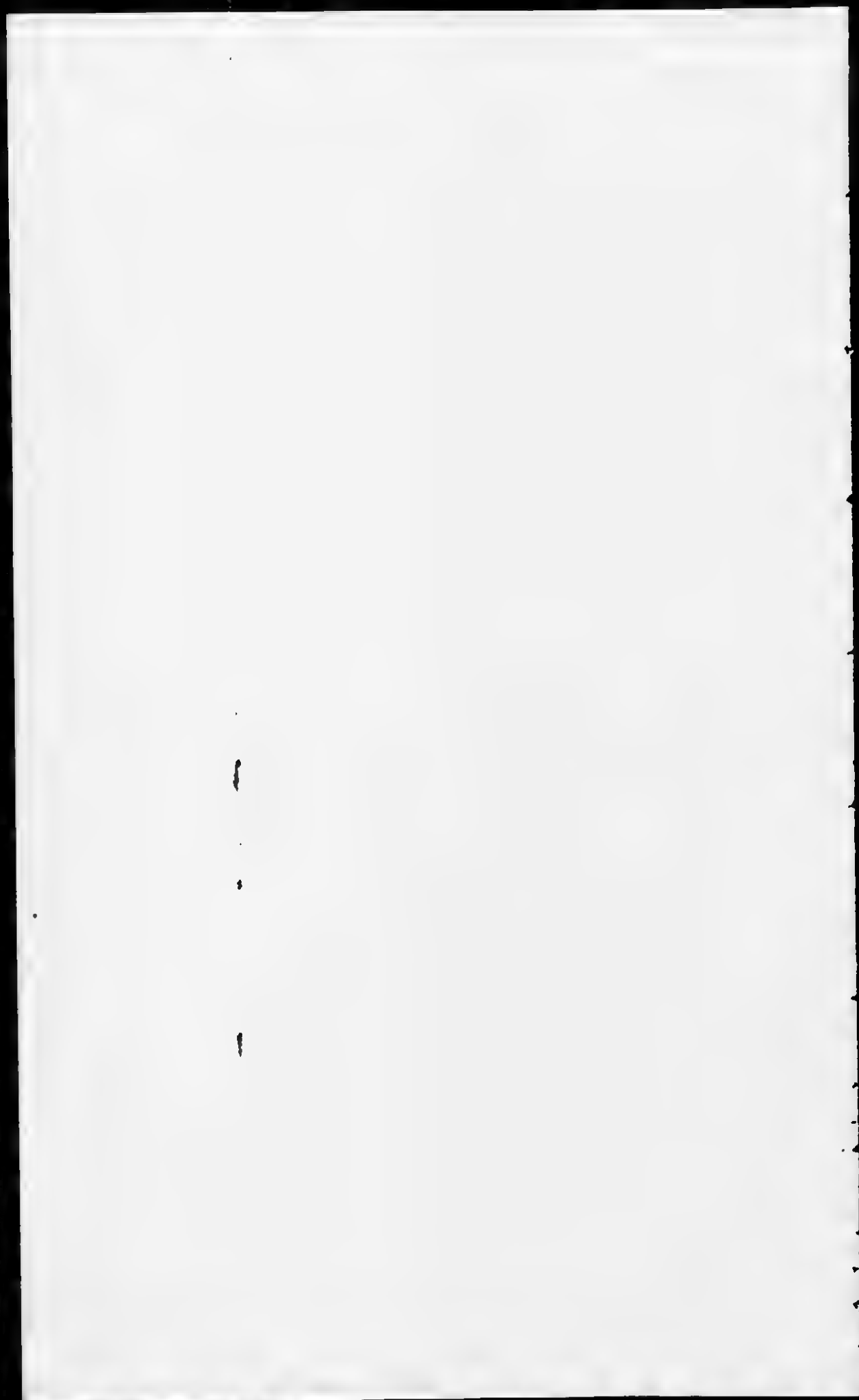
FOREIGN DEPARTMENT

TRAVELERS CHEQUES

GUARANTEED CHECKS

SAFE DEPOSIT VAULTS

INVESTMENT SERVICE DEPARTMENT



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THE ADVISORY BOARD**

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Attorney-at-Law

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President, Southdown, Inc.

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Attorney-at-Law

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Harrison Drug Center

*Members of the Advisory Board

(Sec Officers)

~~10~~

EX 1

THE NATIONAL BANK OF COMMERCE

IN NEW ORLEANS

CONDENSED STATEMENT OF CONDITION AS OF DECEMBER 31, 1961

RESOURCES

Cash on Hand and Due from Banks	\$ 58,565,452.33
U. S. Government Securities	58,922,005.57
Obligations of U. S. Government Instrumentalities	1,003,658.30
Stock in Federal Reserve Bank	570,000.00
Municipal Bonds	15,537,514.75
Other Bonds	1,842.65
Loans and Discounts	124,453,479.60
Special Call Loans	2,750,000.00
Customers' Liability on Acceptances	68,356.85
Branch Bank Buildings and Leasehold Improvements	861,393.20
Furniture and Fixtures	664,349.56
Stock, Gravier Improvement Co., Inc.	500,000.00
Stock, Tulane Branch Corporation	300,000.00
Accrued Interest on Bonds and Loans, and Other Assets	1,392,065.34
	<u>\$265,590,118.15</u>

LIABILITIES

Demand Deposits	\$178,844,857.69	
Savings Deposits	38,268,852.51	
Other Time Deposits	25,548,820.87	
Total Deposits		<u>\$242,662,531.07</u>
Liability on Acceptances	189,061.42	
Less: in Portfolio	104,941.41	84,120.01
Dividend Payable Jan. 2, 1962		264,000.00
Discount collected but not earned		692,067.92
Reserve for Taxes, Interest and Expenses		<u>1,635,458.41</u>
TOTAL LIABILITIES		<u>\$245,338,177.41</u>
Capital Stock		
(660,000 Shares, \$10 Par)	\$6,600,000.00	
Surplus	12,400,000.00	
Undivided Profits	<u>1,251,940.74</u>	
Total Capital Funds		<u>\$ 20,251,940.74</u>
		<u>\$265,590,118.15</u>

Contingent Liability on Letters of Credit Issued but not drawn against \$1,766,879.19

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICERS

JOHN OULLIBER
President

PERCY H. SITGES
Chairman of the Executive Committee

EUGENE M. McCARROLL
Executive Vice President

CLERBERT C. SMITH
Executive Vice President
Correspondent Banking

Senior Vice Presidents
THOS. F. REGAN
FRANCIS C. DOYLE

JOHN E. WAX
Vice President and Comptroller

J. WENSLES PARRA
Vice President and Cashier

Vice Presidents
EDWARD J. DOBARD
W. J. DREZ
JOS. P. DUFOUR
IRWIN GLASER
V. CORDON ISAACSON
JOSEPH J. KNECHT
GEORGE J. LARMANN
RENE J. LAZARE
JOSEPH G. LIER
R. CHARLES STRAIN

JOSEPH C. WHITE
Vice President and Secretary to the Board

Assistant Vice Presidents
FRANK J. BASILE
J. KENNETH BUTLER
DANIEL B. LE GARDEUR

Assistant Cashiers

C. F. ANDRESSEN
BRUCE A. BARKER
PHILIP J. BECKER
EMMET M. BLUM
E. F. DEFOURNEAUX
T. C. DOWLING
MILTON F. FOGARTY
HAROLD S. FORD
CHARLES E. KEENER
B. J. LEGETT
THOS. A. MASILLA
J. S. MIDDLETON
M. C. RYAN
C. W. SANDERS
SAM C. TOURNILLON
HARRY E. WOODS
MELVIN J. ZIEGLER

Advertising and Public Relations
ROBERT D. HESS, *Assistant Vice President*

AUDITING DEPARTMENT
PAUL MUEHLEMAN, *Manager*

FOREIGN DEPARTMENT
E. G. JANÉ, *Vice President*
LAWRENCE J. LAURIE, *Assistant Cashier*

PERSONAL LOAN DEPARTMENT
M. J. ROUSSEAU, JR., *Vice President*
F. PINOGES, *Assistant Vice President*
A. F. FINNEGAN, *Assistant Cashier*

SAFE DEPOSIT DEPARTMENT
HENRY A. DESDIER, *Manager*

SAVINGS DEPARTMENT
MRS. DOROTHY A. PUNEKY, *Manager*

TRUST DEPARTMENT
R. J. EMMER, *Trust Officer*
JOHN E. MORGAN, *Trust Officer*
KENNETH J. LE BLANC, *Assistant Trust Officer*

HEAD OFFICE

BARONNE AND COMMON STREETS
Customers' Parking Garage
Commerce Building — 819 Gravier St.

BRANCHES

CANAL STREET BRANCH
1501 CANAL STREET

W. W. ROOKER, JR., *Assistant Vice President*
 W. V. GRAFF, *Assistant Cashier*

CARROLLTON BRANCH
 3201 S. CARROLLTON AVENUE,
 FRANK A. BROWN, *Vice President*
 N. F. BELLONI, *Assistant Cashier*

DRYADES MARKET BRANCH
 1529 DRYADES STREET
 V. A. DONAHUE, *Assistant Cashier*

FRENCH MARKET BRANCH
 941 DECATUR STREET
 D. R. HANEMANN, *Assistant Cashier*

GEN. MEYER BRANCH
 4800 GEN. MEYER AVENUE
 EUGENE J. CASTILLE, JR., *Manager*

GENTILLY WOODS BRANCH
 4525 CHIEF MENTEUR HIGHWAY
 GEORGE J. RUHLMAN, JR., *Assistant Cashier*

MAGAZINE STREET BRANCH
 3200 MAGAZINE STREET
 J. HARRISON HUGHES, *Assistant Cashier*

ST. CHARLES - JACKSON BRANCH
 2201 ST. CHARLES AVENUE
 WARREN SULLIVAN, *Manager*

TULANE AVENUE BRANCH
 3306 TULANE AVENUE
 EDWARD B. WEAKS, *Assistant Cashier*

OIL AND GAS DEPARTMENT
 HOWARD F. ALBERTY, *Staff Geologist*

LATIN AMERICAN REPRESENTATIVE
 WILLIAM A. VON HUMBOLDT
 AV. JUAREZ 42
 EDIFICIO C. DESP. 1004
 MEXICO 1, D. F., MEXICO

AFFILIATE BANK
 THE NATIONAL BANK OF COMMERCE
 IN JEFFERSON PARISH



THE NATIONAL BANK OF COMMERCE

IN JEFFERSON PARISH (LOUISIANA)

DIRECTORS

WILLIAM E. CASSIDY
*Asst. Div. Sales Manager
Texaco, Inc.*

LOUIS H. CLAY
*Board Chairman,
Southern Ford Tractor Corporation*

HOWARD S. COX
Vice President

S. J. GONZALES, JR.
*President,
Southern School Equipment Co., Inc.*

WILLIAM T. HESS
*Vice-President & Chief Engineer,
Louisiana Power & Light Co.*

DR. VIRGIL T. JACKSON, JR.
Dentist

ARTHUR L. JUNG, JR.
*President,
Jung Realty Co., Inc.*

VICTOR J. KURZWEG, JR.
*President,
Consolidated Companies, Inc.*

F. M. LEGUENEC, JR.
Vice President and Cashier

C. C. McKIRAHAN
Retired

JOHN A. MILLER
*President,
Brown-Miller Company*

R. ITCHELL
*President,
Louisiana Transit Co., Inc.*

ROBERT M. MONSTED
*Board Chairman,
Jefferson Cold Storage, Inc.*

DR. ALTON OCHSNER
Physician and Surgeon

JOHN OULLIBER
*President,
The National Bank of Commerce
in New Orleans*

HENRY F. OWSLEY, JR.
*Owner,
Owsley Insurance Agency*

VIC J. PASSERA
President

SHELLY SCHUSTER
*Board Chairman,
Transoceanic Shipping Co.*

CLEBERT C. SMITH
*Executive Vice President
The National Bank of Commerce
in New Orleans*

ROSS WILLS
*Vice President
C. W. Vollmer & Co., Inc.*

STATEMENT OF CONDITION

DECEMBER 29, 1961

RESOURCES

Cash on Hand and Due from Banks	\$ 3,171,975.70
U. S. Government Securities	8,517,525.01
Municipal Securities	2,018,474.02
Stock in Federal Reserve Bank	36,000.00
Obligations of U. S. Government Instrumentalities	685,301.50
Loans and Discounts	6,020,070.67
Bank Buildings and Leasehold Improvements	431,483.94
Furniture and Fixtures	177,480.54
Accrued Interest, Prepaid Expenses, and Other Assets	152,545.27
TOTAL RESOURCES	\$21,210,856.65

LIABILITIES

Deposits	\$19,340,384.70
Discount Collected but not Earned	61,932.78
Reserve for Taxes, Interest and Expenses	427,176.69
TOTAL LIABILITIES	\$19,829,494.17
Capital Stock (60,000 Shares, \$10.00 Par)	\$600,000.00
Surplus	600,000.00
Undivided Profits	181,362.48
Total Capital Funds	\$ 1,381,362.48
TOTAL	\$21,210,856.65

Member Federal Deposit Insurance Corporation

This Bank is a Legal Affiliate of
The National Bank of Commerce in New Orleans

BEST COPY AVAILABLE

from the original bound volume

EXHIBIT 2

10340

RULES AND REGULATIONS

(b) When a lot of livestock, to be moved under this part, for immediate slaughter, to a federally inspected slaughtering establishment or a slaughtering establishment specifically approved in § 78.15(b) of this chapter, has been inspected and found free of any evidence of screwworms and treated at an inspection station or other place in accordance with § 83.6(b), § 83.7(a)(2), § 83.8(c)(2), § 83.8a (a) or (c), or § 83.12(a), the inspector may issue a certificate, in quadruplicate, reciting that the lot has been so inspected and found free of any evidence of screwworms and treated, identifying the lot by number of livestock, kind, breed, and sex, and giving the data of inspection and treatment, the names and addresses of the consignor and consignee, and the point of origin and destination of the shipment.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791, as amended, 792, as amended; 21 U.S.C. 111-113, 120, 121. Interpret or apply secs. 6, 7, 23 Stat. 32, as amended; 21 U.S.C. 115, 117, 19 F.R. 74, as amended)

The foregoing amendments impose additional requirements upon the interstate movement of livestock and certain dogs from or through Alabama or Georgia into Florida. There are currently existing in Alabama and Georgia screwworm infestations which may be disseminated into Florida, an area currently free of screwworms. If additional preventive measures are not taken regarding the interstate movement of livestock into Florida. The amendments should be made effective promptly in order to accomplish their purpose in the public interest. Therefore, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to such amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after their publication in the FEDERAL REGISTER.

Effective date. The foregoing amendments shall become effective upon issuance.

Done at Washington, D.C., this 31st day of October 1961.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 61-10533; Filed, Nov. 2, 1961; 8:53 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 262—RULES OF PROCEDURE

Actions on Applications or Requests, and Similar Matters; Bank Holding Company and Merger Applications

1. Effective November 1, 1961, Part 262 is amended by adding the following new paragraph (g) to § 262.4:

§ 262.4 Action on applications or requests, and similar matters.

(g) *Bank holding company and merger applications.* In addition to procedures applicable under other provisions of this part, the following procedures are applicable in connection with the Board's consideration of applications under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), hereafter called holding company applications, and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828), hereafter called merger applications. Unless otherwise indicated, these procedures apply to both types of applications.

(1) The Board issues each week a list that identifies holding company and merger applications received during the preceding week. Notice of receipt of each holding company application is published in the FEDERAL REGISTER as provided in § 222.4(e)(2) of this chapter [Regulation Y].

(2) If a hearing is required by law or if the Board determines that a hearing for the purpose of taking evidence is desirable, the Board will issue an order for such a hearing, and notice thereof will be published in the FEDERAL REGISTER. Any such hearing will be conducted by a hearing examiner or hearing officer in accordance with the Board's Rules of Practice for Formal Hearings (Part 263 of this chapter) and, unless otherwise ordered by the Board, shall be public.

(3) In any case in which a formal hearing is not ordered by the Board, the Board may afford the applicant and other properly interested persons (including Governmental agencies) an opportunity to present views orally before the Board or its designated representative. Unless otherwise ordered by the Board, any such oral presentation of views shall be public and notice of such public proceeding will be published in the FEDERAL REGISTER. Participants in any oral presentation of views will be allotted reasonable periods of time for presentation of their views.

(4) The Board's action on each application is embodied in an Order that indicates the voting of members of the Board and is accompanied by a Statement of the reasons for the Board's action. Both the Order and accompanying Statement are released to the press. Normally, the Statement is issued at the time of issuance of the Order; where this is not practicable, the Statement is issued as promptly as possible after issuance of the Order. Each such Order is published in the FEDERAL REGISTER; and the Order and Statement are published in the next succeeding issue of the Federal Reserve Bulletin.

(5) Each Order of the Board approving an application includes, as a condition of such approval, a requirement that the transaction approved shall not be consummated within seven calendar days following the date of such Order, except in emergency or other situations as to which the Board determines that such a requirement would not be in the public interest. Each Order approving an application also includes, as a condition of

approval, a requirement that the transaction approved shall be consummated within three months and, in the case of acquisition by a holding company of stock of a newly organized bank, a requirement that such bank shall be opened for business within six months.

(6) After action by the Board on an application, the Board will not grant any request for reconsideration of its action, unless the request presents relevant facts that, for good cause shown, were not previously presented to the Board, or unless it otherwise appears to the Board that reconsideration would be appropriate.

2a. The purpose of this amendment is to inform the public of procedures followed by the Board of Governors of the Federal Reserve System with respect to applications under section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828).

b. Notice, public participation, and deferred effective date are not required by section 4 of the Administrative Procedure Act for rules of agency procedure or practice, and therefore were not provided in connection with the adoption of these amendments.

(Sec. 11(1), 38 Stat. 262; 12 U.S.C. 248(1))

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 61-10533; Filed, Nov. 2, 1961; 8:53 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

(Reg. Docket No. 950; Amdt. 363)

PART 507—AIRWORTHINESS DIRECTIVES

Canadair CL-44D4 Aircraft

There have been failures of the elevator tab tension rods on Canadair CL-44D4 aircraft. To preclude further failures, an airworthiness directive requiring replacement of the elevator tab tension rods every 450 hours' time in service is considered necessary.

As a situation exists which demands immediate action in the interest of safety, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

CANADAIR. Applies to all CL-44D4 aircraft. Compliance required as indicated.

To preclude failure of the elevator tab tension rods, P/N 28-90031, the life of each rod is limited to 450 hours' time in service.

Filed June 20, 1962

EXHIBIT 3

WHITNEY HOLDING CORP.

Order for Public Proceeding

In the matter of the application of Whitney Holding Corporation, New Orleans, Louisiana, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956.

Whitney Holding Corporation, New Orleans, Louisiana, has filed an application, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956, for prior approval by the Board of Governors of action whereby Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the stock of (1) the Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Louisiana (a proposed new bank). Notice of this application was published in the FEDERAL REGISTER affording interested persons an opportunity to submit written views and comments (26 F.R. 6792).

It now appears to the Board to be in the interest of the public, as well as the Applicant, to afford further opportunity for the expression of views and opinions by interested persons in a public proceeding before the Board.

Accordingly, it is hereby ordered, That a public proceeding before the Board be held commencing at 10 a.m. on January 17, 1962, at the offices of the Board of Governors, Washington, D.C.

It is further ordered, That any person desiring to appear before the Board at this proceeding should file with the Secretary of the Board, 30th and Constitution Avenue NW., Washington 25, D.C., on or before January 3, 1962, a written request setting forth a brief statement of the nature of the views he wishes to express. Persons submitting such requests will be notified of the Board's decision thereon.

Dated at Washington, D.C., this 19th day of December 1961.

By order of the Board of Governors.

[SEAL]

MERRITT SHERMAN,
Secretary.

[F.R. Doc. 61-12172; Filed, Dec. 22, 1961;
8:46 a.m.]

58

Federal Register
Dec. 22, 1961

*Classified and
Declassified*

EX 3

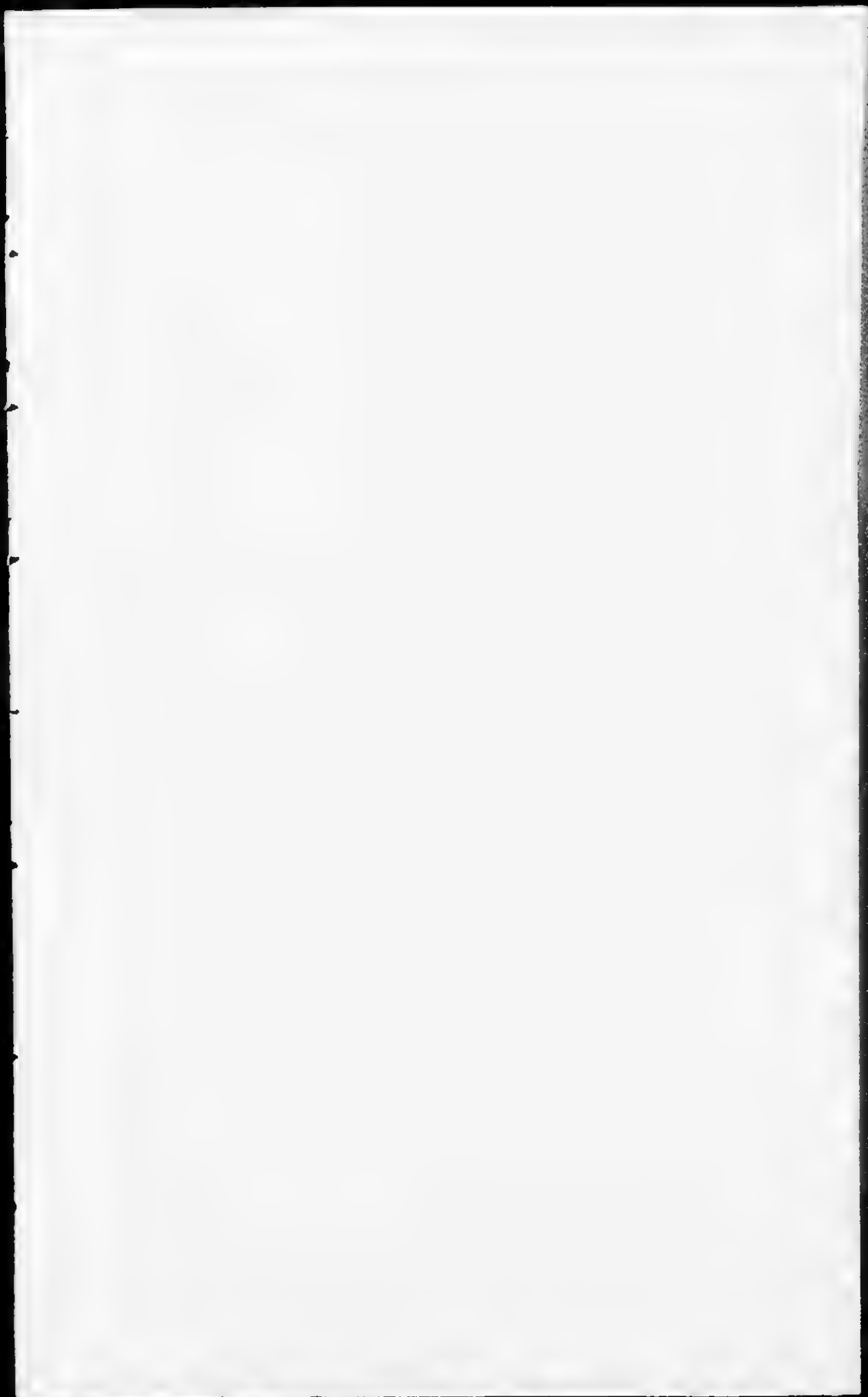


Exhibit 4

TRANSCRIPT OF PROCEEDINGS

UNITED STATES OF AMERICA

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

In the Matter of the Application of: WHITNEY HOLDING COR-
PORATION New Orleans, Louisiana

Pursuant to Section 3 (a) (1) of the Bank Holding Company
Act of 1956

Washington, D. C.

January 17, 1962

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TABLE OF CONTENTS

Statement of:

Page

Keehn W. Berry, President, Whitney Holding Corporation

63

Louis J. Roussel, American State Gulf Natural Gas Corporation and Universal Drilling Company, Inc., New Orleans, Louisiana

75

Clem H. Sehrt, Sehrt & Boyle, New Orleans, Louisiana

83

Victor J. Passera, Jr., President, The National Bank of Commerce in Jefferson Parish, Louisiana

90

Malcolm L. Monroe, Monroe & Lemann, New Orleans, Louisiana

92

[1]

UNITED STATES OF AMERICA

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

In the Matter of: The Application of WHITNEY HOLDING CORPORATION, New Orleans, Louisiana, pursuant to Section 3 (a) (1) of the Bank Holding Company Act of 1956 for the Board's approval of the formation of a Bank Holding Company

Room 1202
Federal Reserve Building
Constitution Avenue
Washington, D. C.

Wednesday, January 17, 1962.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

MEMBERS OF THE BOARD PRESENT:

Chairman William McC. Martin, Jr., Presiding; Governor C. Canby Balderston; Governor A. L. Mills, Jr.; Governor J. L. Robertson; Governor Charles N. Shepardson; Governor G. H. King, Jr.; Governor George W. Mitchell.

APPEARANCES:

Malcolm L. Monroe, Esq., Monroe & Lemann, 1424 Whitney Building, New Orleans, Louisiana, and Keehn W. Berry, President, on behalf of Whitney Holding Corporation.

[2] Clem H. Sehrt, Esq., Sehrt & Boyle, 1507 Pere Marquette Building, New Orleans, Louisiana, on behalf of opposition: L. J. Roussel, Universal Drilling Corporation, Gulf Natural Gas Company, and estate of Mrs. John Segier.

Louis J. Roussel, 502 Whitney Building, New Orleans, Louisiana, on behalf of Self: American State Gulf Natural Gas Corporation and Universal Drilling Company, Inc.

Victor J. Passera, Jr., President, The National Bank of Commerce in Jefferson Parish, Louisiana.

[3]

PROCEEDINGS

Chairman Martin: All right, gentleman, I will call the meeting to order.

The Board is meeting this morning to receive oral presentations of views and comments with respect to the application by the Whitney Holding Corporation, New Orleans, Louisiana, for the Board's prior approval of the formation of a holding company, pursuant to Section 3 (a) (1) of the Bank Holding Company Act.

The applicant seeks approval of its acquisition of the stock of the Crescent City National Bank, New Orleans, Louisiana, a proposed new bank, into which would be consolidated the existing Whitney National Bank of New Orleans under the latter title, and the Whitney National Bank in Jefferson Parish, Louisiana, a proposed new bank.

I am going to ask counsel for the Board to state for the record the appearances to be made and the general procedure that we will follow.

Mr. O'Connell: Mr. Chairman, pursuant to publication in the Federal Register of notice of this public proceeding and for opportunity for the presentation to the Board of Governors of views and comments, the following appearances for the purpose of presenting such views are noted:

On behalf of the applicant, Mr. Keehn W. Berry, President, Whitney National Bank of New Orleans, and [4] Mr. Malcolm L. Monroe, counsel for the applicant.

Mr. Chairman, the applicant has been given one hour for its presentation and has been advised that this time may be used in any manner desired in relation to its presentation in chief, summary, or rebuttal presentation.

I will ask each person appearing this morning that if a written statement of his remarks is available, that it be presented to the court reporter to be placed in the record, and then to the extent possible that a summary of that statement be presented to the Board.

The Board is also granted the opportunity for oral presentation to Mr. Louis J. Roussel and to his counsel, Mr. Clem H. Sehrt, both gentlemen from New Orleans, Louisiana. These gentlemen have also been advised together they have 30 minutes for their presentations.

In addition, Mr. Chairman, I am advised this morning there is present at the oral presentation a Mr. Vic J. Passera, Jr., President of the National Bank of Commerce

in Jefferson Parish, Louisiana. Mr. Passera did not, pursuant to the Board's published notice, request in advance nor was he given permission to appear and give a statement, Mr. Chairman. However, he now requests he be allowed to appear before the Board and present a few remarks in reference to the application.

If appropriate, I would like the Chairman's views on this request.

[5] Chairman Martin: Well, the Chair will ask the applicant whether he has any objection to Mr. Passera.

Mr. Berry: None.

Chairman Martin: Well, if the applicant has no objection, we will give Mr. Passera not more than 10 minutes if that is agreeable with Mr. Passera.

Mr. Passera: Yes, thank you.

Mr. O'Connell: Thank you, Mr. Chairman.

I am directed by the Board to advise that within 15 days following today's proceedings, that is on or about February 1, 1962, the Board will receive from participants any written comments or views they wish to submit relating to today's presentations.

A transcript of the proceedings is being made and copies will be available for purchase. Orders for such copies may be placed with the reporter at the close of today's presentations.

Mr. Chairman, that concludes the Board's counsel's statement.

Chairman Martin: The Board will now proceed with the applicant and anyone the applicant sees fit to testify.

ORAL ARGUMENT OF KEEHN W. BERRY, PRESIDENT, WHITNEY HOLDING CORPORATION

Mr. Berry: I feel apologetic in taking the time of this Board.

Chairman Martin: There is no reason to stand up if you would rather sit down.

[6] Mr. Berry: I will sit in just a moment, then, if I may. I first wanted to give you some maps here that would enable you to follow the thing, see the physical layout.

In New Orleans, we are further inclined to judge directions by the compass, in relationship to the river and the lake, so that in our application we refer to "East Jefferson," "East Jefferson west of New Orleans."

The heavy blue line on these maps shows the Parish line and the application relates to this unit here (indicating map) in green, the green star. This unit here (indicating on map). And it is "East Jefferson" only because it is on the east bank of the Mississippi River.

Now, there is a portion of Jefferson Parish located on the other bank of that river. But at this particular time, we are asking for the right to serve East Jefferson.

In order to conserve your time, I shall stick very closely to some written comments which I have prepared.

The City of New Orleans as a metropolitan area has spread in recent years beyond the boundaries of the Parish of Orleans.

The "parish" in our state is equivalent to a county.

Under present laws in our state, the Whitney is not permitted to establish branches outside the Parish of Orleans.

There is a rapidly growing industrial area in [7] adjoining Jefferson Parish up river from Orleans, in the area of that green star.

There are one or two other items that should be pointed out. There is a causeway across the Lake Pontchartrain, that ties into this (indicating on map)—comes down through here—provides a through traffic from across the lake down to that point. That is the reason for the concentration in this immediate area.

The causeway is here (indicating on map).

The industrial development, in the form of large plants, more or less extends up river on both sides to Baton Rouge, about 80 miles. Industry is becoming more conscious of fresh water as a valuable natural resource which is becoming scarce in older industrial areas, such as in Texas and in the Birmingham, Alabama, area—around Birmingham.

There is, therefore, good reason to look forward to continued industrial growth along the river with a concentration of smaller industries in Jefferson Parish.

New Orleans is located on low land, all of which requires levees and drainage before it can be used for industrial and residential purposes. This makes the land values high and tends to concentrate population. At present, most of the open land available for housing development is between Lake Pontchartrain and the Mississippi River in Jefferson Parish, the area I pointed out to you. That area residentially has been [8] growing rapidly.

The management of the Whitney National Bank has been studying and weighing alternative methods of entering Jefferson Parish to serve our present customers who have moved their plants there, or who have gone there to live and to participate in the further growth of that area.

The feasible alternatives are either an affiliate bank owned by a few large stockholders of the Whitney—stockholders whose holdings in the original bank are so large they cannot afford to part with the holdings in the small one—or the establishment of a holding company which would own all of the stock of the present Whitney National Bank and own, likewise, all of the stock of the Whitney National Bank in Jefferson Parish.

When I refer to “all,” I mean all except the directors’ qualifying shares. I mean that will apply all the way through.

This has been a problem demanding action by Whitney management since the Comptroller of the Currency in 1955 allowed our largest competitor in New Orleans to operate in Jefferson Parish by chartering the National Bank of Commerce in Jefferson Parish, an affiliate of the National Bank of Commerce in New Orleans.

The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution. [9] provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company.

The Comptroller of the Currency has concurred in a program which has the effect of putting the ownership of the present Whitney National Bank stock into the Whitney Holding Corporation, through this Crescent City National Bank that was mentioned, and to the establishment of the Whitney National Bank in Jefferson Parish with funds from the present Whitney National Bank, the stock of which would be also owned by the holding company.

The Comptroller’s action, however, is subject to the approval of this Board of the application of the Whitney Holding Corporation to establish the wholly owned Jefferson Parish subsidiary.

This subject was first discussed with the legal staff of the Federal Reserve Board in the fall of 1960. Your staff called my attention to something which I should have under-

stood if I had been more familiar with the Holding Company Act; they called my attention to the fact that by completing the first part of the program—in other words, the stock of the Whitney National Bank of New Orleans would be wholly owned by the Whitney Holding Corporation—we would not need come to this Board at that stage since the holding corporation would then own [10] only one bank and would not be a holding company under the Holding Company Act.

If we had done it that way, we would clearly now be asking you only for permission to become a holding company by establishing a new bank in Jefferson Parish and by acquiring all of its stock.

Because the Comptroller did not want to take the first step—ownership of the Whitney National Bank stock by the Whitney Holding Corporation—unless we simultaneously went forward with the second step, we are here before you today with our application in this form.

The Comptroller has already concurred in the acts required to consummate the first step and granted preliminary approval of an application for charter for the Whitney National Bank in Jefferson Parish. He has made the normal investigation by his examiners in the field, along with examiners in your office and the FDIC.

We understand that he has advised you that these charters will be issued if and when the Federal Reserve Board approves this application for a holding company, which will own the stock of the present Whitney National Bank of New Orleans and the stock of Whitney National Bank of Jefferson Parish.

On the recommendation of the Comptroller, we proceeded with our stockholders' meeting submitting to stockholders our entire program and the reasons for it.

[11] On November 29th, last year, our stockholders met. We had 105,824 shares out of 112,000 outstanding represented at the meeting; 93,645 shares voted in favor of the program and 12,145 shares voted against it. I take it this represents overwhelming approval by our stockholders.

Now then, this general statement of a physical layout at home and of our program, which Chairman Martin very well summarized in stating the purpose of this meeting, provides the general background against which I would like to discuss the five items under the Holding Company Act as a basis for action on the application.

Mr. Monroe is handing you a copy of our annual report as of the year end and I would like for you to turn to the statement which is in the middle of it. He will also give you a set of figures which cover the operation of the Whitney National Bank from 1936 to June 30th. I left the last one June 30th simply because they conform to the application which was filed early in July.

The last line on that is not a year-end figure; it is a mid-year figure therefor.

I give you these because to me these figures are the best answer which I could make to factors (1), (2), and (3), which the Holding Company Act sets up as factors governing the determination of application for approval.

The form of the capital structure of the Whitney [12] National Bank of New Orleans—\$2.8 million of capital, \$27.2 million of surplus, and \$13,835,000 undivided profits—evidences conservative management over a long period of years.

The figures show that there have been no mergers of other banks into the Whitney and the capital structure stated in those figures cannot be created except out of the accumulation of earnings. It cannot be set up in a day.

Insofar as factors (1), (2), and (3) of the Holding Company Act, the items to be considered are applied to the new unit in Jefferson Parish. The management of that unit will be supplied from the Whitney National Bank of New Orleans. That unit will have the benefit of the training program of the old bank and can select the personnel best adapted to its needs.

As to the "prospects" of the old bank, which is one of the items in the first three categories, I am sure the Board is willing to assume that the old bank will continue to do at least as well in the future as it has in the past.

As to the "prospects" of the unit in Jefferson Parish, it should share in the same sort of growth as the affiliate of the National Bank of Commerce in New Orleans, our competitor, which has in the 6 years of its operation in Jefferson Parish accumulated in excess of \$18 million of deposits. The continued growth of the industrial area and residential area of New Orleans into Jefferson Parish must mean an expanding need for banking services.

[13] As a matter of fact, in that connection, the figures for the banks there are interesting. The Merchants Savings Bank, \$13 million deposits in 1956; \$17 million in 1960.

Merchants Trust Company in Canada, 1956, \$3 million; 1960, \$6 million. National Bank of Commerce in Jefferson Parish, \$9.4 million in 1956; \$18 million in 1960. Putting them altogether, it is a 63 per cent increase in 5 years, which is I think an evidence of the growth of the community and the need for expanding banking service in the area.

As to the fourth factor—"the convenience, needs and welfare of the institution and the area concerned"—the sheet of figures which you have before you showing the results of the Whitney National Bank of New Orleans' operation since 1936 giving the growth in deposits and the increase in loans evidence the character of service and the extent to which it has served the convenience, needs, and welfare of the area in which it is operating.

The Whitney National Bank of New Orleans will continue in exactly the same form as it is now except for the withdrawal of \$650,000 in capital funds which will be put into the Jefferson Parish unit as capital for it.

As to the criteria of the fourth factor as applied to the National Bank of Commerce in Jefferson Parish, our application filed with you in Exhibit D contains letters from such concerns as: Plymouth Cordage Company, a twine manufacturer; [14] Charles Dennery, Incorporated, a large manufacturer and dealer in bakery supplies—they operate a plant which we have financed in the immediate area in Jefferson Parish, this green star on the map (indicating map), they operate warehouses in Dallas and Atlanta; Mr. O. E. Alexander, Jr., Zone Manager, Chevrolet Motor Division; General Motors Corporation, they have finished a large building in which they distribute parts, which is located in that immediate area; The Freiberg Mahogany Company, manufacturers of mahogany lumber and veneer; Rausch Naval Stores Company, manufacturers, dealers, and exporters of turpentine, rosin, and pine tar; Great Atlantic and Pacific Tea Company, which has an office and warehouse there; Boyce Machinery Corporation, distributors of caterpillar equipment and operate throughout the state with offices right at the bridge in the neighborhood of the green star; Crescent Materials Service, a wholesale building supply dealer; Sears, Roebuck & Company, which has its warehouse and service operation in that immediate area; Max N. Tobias Bag Company, a bag manufacturer and also a distributor of cattle feed and chicken feed throughout the Central American countries and the South

American countries, around the Gulf and in the island. They use our foreign department.

All of these concerns are customers of Whitney National Bank. Their letters certify to their need for Whitney service closer to their operations in Jefferson Parish than our present facilities.

[15] We could have brought these here and others as witnesses as to the need and convenience of this Whitney National Bank in Jefferson Parish. As I read the list, I realize we failed to ask one of our largest customers in the immediate vicinity of the proposed Jefferson Parish bank to write a letter. His plant is immediately across the bridge. That concerns the Avondale Shipyards, Incorporated. I am going to tell you a little about that because I think it indicates the kind of service that will be needed and is needed in an area of a small industry.

That concern, Avondale Shipyards, began doing business with us as a barge repair yard which had acquired the tracts down the levee used by the Southern Pacific Railroad for loading its railroad cars onto ferries before the construction of the bridge.

With the tools at hand and those facilities in the period preceding World War II, they accepted the Navy contract to build three large Navy tugs, each costing between \$1 million and \$1.5 million. This company had \$65,000 worth of working capital.

We financed that particular contract because the management was capable. We financed them throughout the war period without V loan guarantees or other support.

The original owner sold the property a few years ago for \$14.5 million.

We are still the company's sole banking connection. [16] But the affiliate of our chief competitor has two units in Jefferson Parish closer to this customer of ours than our nearest unit in New Orleans.

The same is true of each of the companies listed in the letters.

Our application file also shows that the Illinois Central Railroad is pressing the development of its lands for use by small industries.

We feel that those industries are entitled to the choice of banking service of more than one New Orleans-based bank.

I think that is important. In other words, we have one

New Orleans-based bank in the area and serving the area and, reading the categories as they are set out in the Act, it seems to me that the customer is entitled to a choice, not being forced to go to one New Orleans-based bank in that Parish if he needs service that goes beyond the ability of the small or independent banks to serve.

Inasmuch as the Whitney National Bank in Jefferson Parish is a new unit, I take it that the National Bank Examiner, on behalf of the Comptroller, your examining staff, and the FDIC examiners reported to each of their agencies on the general convenience and needs of the community.

Since our application has been on file with you, in fact since I wrote the memorandum, the Comptroller has granted [17] to the National Bank of Commerce permission to open an additional unit, making five units I think on the east bank of the river. And the state authorities have also authorized a state institution, the location of which we had originally proposed a branch.

I have attached to this a letter in which they are offering stock. They describe the possibilities of Jefferson Parish in glowing terms.

The one comment that is made is that "an availability study, made before applying for the charter, showed that there was room for six more banks in Jefferson."

I don't know how you determine it that accurately.

"The growth of Jefferson Parish has been amazing. It has had the largest population increase in this area. Retail sales have jumped from \$45 million to \$206 million. Effective buying income has climbed from \$44 million to \$382 million. Such tremendous economic growth, in our opinion, leads us to believe that an aggressive bank like ours has an excellent future."

Those are statements from competing sources which may lend some weight.

I have trouble in keeping factors (4) and (5) apart. They are inclined to mix. I think I can deal further with (4) and (5) by stating to the Board the factors which influenced the management and directors of the Whitney National Bank of New Orleans to adopt the holding company route and look to common [18] ownership of all the National Whitney Bank stock in New Orleans and stock of the Whitney National Bank in Jefferson Parish by a

holding company. That, of course, is subject to qualifications and directors' qualifying shares.

The management felt that it was the soundest method of pooling the deposits of our customers and our capital funds for the use of our customers and the community in the development of the community.

The New Orleans metropolitan area, after all, is a unit only broken into pieces by imaginary boundary lines that run through the population centers.

The form of ownership of the Jefferson Parish unit which we propose will assure to all customers of that unit access to the large loan limits of the combined banks. They allow the security which arises out of the fact that the large bank and the small bank have identical ownership as well as management.

They will be assured that notwithstanding the smaller capitalization of the Jefferson Parish bank, the large bank cannot afford to let anything happen to the smaller to the detriment of the depositors.

As we see it, in an affiliate relationship, we have no way of knowing or no way to prevent the stock of the two institutions from drifting apart. It is my understanding that if, in the case of an affiliate, less than 50 per cent of its stock is owned by the stockholders of the other bank—in other words, [19] if the common ownership drops below 50 per cent—supervisory authorities must require that there be no interlocking of officers or directors.

That could happen in a period of stress and be embarrassing to both banks. It could even be embarrassing to the whole banking community in my opinion.

In an affiliate relationship with different stockholders, there is a constant conflict of interest as between those stockholders in every transaction between the two banks. With interlocking officers and directors, every transaction is open to question as to which bank had the advantage in the transaction.

That could be eliminated under the approach that we have taken.

From a customer's point of view, he has a similar conflict of interest. If he lives in the Parish, if he operates in the Parish, he carries his balance in the smaller bank, he does not feel that he has the same right to go into the

larger bank to the senior officers to discuss his credit and management problems.

I think that is one of the most important services a bank renders aside from lending money, discussing the customer's problems with him and helping him arrive at a proper decision, letting him convince the bank management that his plans are correct and are right.

He would not feel that he had that privilege of coming [20] in to the larger bank's senior officers unless there were that common ownership of the two banks.

With the common ownership, he would have no hesitancy to come over; he would feel it is all the same general situation.

As to the competitive factor, monopoly factor, which goes into (5), inasmuch as we are starting a new unit from the ground up, we are not expanding in the adjoining community and absorbing by merger or consolidation banking resources which already exist.

Any expansion in the Whitney Holding Company system, once we are granted that authority to set up a holding company system which comes about by reason of this second unit—namely, the Whitney National Bank in Jefferson Parish—will come about because industry located in Jefferson Parish near that bank, or residents of Jefferson Parish find that unit convenient and our banking service better than some other service which is already there. They will come to us voluntarily because we are offering convenience, or there is a need not presently being filled, or even because they recognize soundness in this approach which is lacking in the affiliate approach.

Now, in order to complete your records, there will be some additional exhibits filed with you.

I will be glad to try to answer any questions that the Board has.

Again, I apologize for taking your time on what is to [21] us an important matter when you are confronted with much larger problems, but this is an important one to us.

Chairman Martin: This is an important matter to us also.

Questions? Does the Board have any questions?

Governor Mills: Mr. Chairman, if I might ask Mr. Berry, the question could carry over to the other gentlemen who are making statements—this is a very broad question, but I gather from the map and your discussion and from the

matter already available to the Board that the banking area for New Orleans should in fact be considered the metropolitan area and not necessarily the legal boundaries, or parish boundaries that are set by state law.

Now, viewed in that way, and the fact that there are these parish boundaries, it might be construed that the parish boundaries are comparable to the trade barriers that limit the movement of commerce and that have come under discussion in various states and different situations.

Now, if those state barriers were removed, could you perceive a different situation than the one that now confronts you?

In other words, if those barriers were removed and the privilege of branching were permitted into those areas, would you feel that the attitude of the state and Federal banking authorities would be different than those that have been [22] true in the past?

To put it more particularly, within the limits of the City of New Orleans where branching is now allowed, has there been any disposition of the public authorities to refuse the applications of the banks within the city to establish branches for the convenience and the service of their clients and has there been any record that where those branches have been permitted and established, that the operation of any of them has been considered in official lights as having been detrimental, competitively, to any of the other banks?

Mr. Berry: No.

Governor Mills: Now to ask the question, one further point, if you extended that line of reasoning to the area in which you would now propose to enter through the holding company vehicle, would you consider or would others consider that what is tantamount to the establishment of a service as compared to a bank could prove in light of experience detrimental to the competitive efforts of smaller banks?

Mr. Berry: Taking New Orleans first in which we are permitted to establish branches, I know of no branch being refused as a matter of fact. And I know of no harm that ever came from starting one.

As a matter of fact—I wouldn't say that bankers are always guided by sound reasoning, but the pinch of operating costs has a tendency to control it anyway. If you move into a [23] territory that won't support a branch, it is simply a drain on you.

If branch banking were permitted in Jefferson Parish, I wouldn't be here because it would be much simpler to have it by way of a branch. We would eliminate one additional bit of supervision which we will have from your agency if we could go directly by branch. But that is not possible. We see no signs of it coming about by legislative action. And before we move—as a matter of fact, we waited rather long to move. As I say, our principal competitor has been in the parish since 1955 and our problem has been—we have been unwilling to go with an affiliate which we couldn't hold onto necessarily.

It doesn't become a part of our organization; it is just sort of hanging loosely. You have these conflicts of interest and it is awkward.

The thing that makes this interesting to us is the ability to approach the branch phase of it. From the point of view of service to the community, there isn't a shadow of doubt in my mind that there is the need for service. I don't think it hurts anyone to have the competition. And frankly, I don't think we will get business, as I said, in our units except insofar as we provide something that someone else isn't providing that the customer wants.

This area is growing very rapidly. At the moment it is the only land that is really readily available for building. [24] It doesn't have all the drainage advantages that the old City of New Orleans does. There are movements, there is discussion of some drainage to the east, toward the Gulf Coast, but that is still to come. But the real industrial area is going to be up-river because they are going there because there is fresh water and the Mississippi River as a fresh water stream is a tremendous natural resource.

A little farther up the river, there, you have some oil refineries. Our list of customers is incomplete—we have oil refineries and aluminum plants, sugar plants, sugar refinery. It is a growing industrial area that will need servicing. It should have a relationship with a large bank and that would have to be a downtown bank. Because chances of developing enough facilities in an independent unit there are not such as to enable anyone to take care of the needs of one of those larger companies involved.

Does that answer your question?

Governor Mills: Thank you.

Chairman Martin: Are there any other questions from the Board? (No response)

If not, thank you very much.

Mr. Berry: Delighted.

Mr. Monroe: Excuse me, Mr. O'Connell, I would like to complete the record.

Do I need to dictate into the record under your [25] procedures what we would like to have in the record that has been presented or will that automatically become a part of the record?

Mr. O'Connell: I would ask the Board that all the documents that have been presented by applicant be admitted.

Chairman Martin: No objection? (No response.)

They will be admitted as part of the record.

Mr. Monroe: That would also include the proceedings before the staff, the application?

Mr. O'Connell: The application and the previous submittals by you, supplemental application, are now part of the record and will be before the Board when it decides this matter.

Mr. Monroe: Thank you very much.

Chairman Martin: We will proceed now, then, with Mr. Roussel and Mr. Sehrt.

ORAL STATEMENT OF LOUIS J. ROUSSEL, AMERICAN STATE GULF NATURAL GAS CORPORATION AND UNIVERSAL DRILLING COMPANY, INC.

Mr. Roussel: May I sit down?

Chairman Martin: Yes.

Mr. Roussel: My name is Louis J. Roussel.

I want to tell you that I left school in grammar school and if I make any grammatical errors, I will ask you to forgive me. You will know why. I have been working since I have been a youngster.

Now I will present to you, the members of the Board of Governors, the opposition to Mr. Berry's Holding Company deal.

I am appearing in opposition to the Holding Company [26] for the various reasons that I will list as I will proceed.

First, the writer and his company are substantial stockholders in the Whitney National Bank. We believe that the

holding company plan is merely a subterfuge to eliminate cumulative vote.

We believe that it is a device that they will use in order to gather in all of the millions of dollars of hidden assets that the Whitney National Bank now has into a holding company without cumulative vote.

Second, I am enclosing a copy of a charter that they have filed to be used as a holding company charter, and I am sure that after you gentlemen take a look at this corporation that you will see what I see in it, that one man can control it at his will or whim, the way he sees fit.

Third, I am enclosing a copy of a purchase of real estate that was made by the Whitney National Bank in Saint Mary Parish, Louisiana, which is considered to be oil property.

This property is located 75 to 100 miles from the City of New Orleans. It could not be possibly used for any bank building or any use of the Whitney National Bank, in complete violation of the national laws of the United States governing national banks.

Four, on July 31st, I wrote a letter to Mr. R. M. Gidney, the Comptroller of the Currency. It is enclosed. It is self-explanatory. I informed Mr. Gidney that the Whitney [27] National Bank was listing the members of the Advisory Board and the directors all grouped together in such a manner that the public could not tell which was which.

Mr. Berry presented you with a copy of the financial statement of the Whitney Bank. If you will look at it, you will see that it is just that way, gentlemen.

I told Mr. Berry at that time that Mr. Taylor, at the annual meeting—Mr. Taylor had written me a letter that he would notify me to write them differently. I asked Mr. Berry that question at the annual meeting. He told me he didn't think he had to do that.

Five, on September 22, 1961, I forwarded to each stockholder and the Comptroller of the Currency a brochure which I had prepared showing the dealings between the Whitney National Bank and one of its directors involving property on Veterans Highway and Jefferson Parish.

It is alleged in that brochure that the property was sold for below its actual value, that many people had gone into the bank inquiring about this property and were given such a cold shoulder by Mr. Berry that most of them abandoned the idea of trying to buy. Others weren't able to obtain any

information whatsoever and, gentlemen, I have names of these people that I have interviewed. Consequently the property was sold for far below its actual value.

Mr. Berry answered that letter and brochure by stating [28] that the land deal was a relatively simple one.

At the annual stockholders' meeting on January 9th, I asked Mr. Berry the following question:

"Mr. Berry, if the land deal in Jefferson Parish on Veterans Highway and the lot on Carrollton and Plum was, as you stated, a relatively simple matter, would you please explain to the stockholders why the lot was purchased by Mr. Favrot's company, Carondelet Realty Corporation, who in turn sold it to Palmetto Realty Corporation and two of Mr. Favrot's relatives, who in turn sold it to the Whitney National Bank in a deed that did not recite the consideration?"

Mr. Berry answered at the meeting that they handled it as a trade in order to save \$25,000 in taxes; that would have been paid to the Federal Government.

If this is so, then I charge that Mr. Berry and Mr. Favrot as a director entered into a one-sided agreement in order to "fudge" on the Government to the tune of \$25,000 that was justly due.

Mr. Berry is now in front of the same Government asking them to help him form a holding corporation in order to eliminate cumulative voting. No other reason; cumulative vote.

He has "fudged" on his own Government by his own admission to the extent of \$25,000. I was raised under the theory that if you will take a little, you will take a lot. I wonder if Mr. Berry has systematically "fudged" on larger [29] amounts against his Government?

In Mr. Berry's own letter, he states as follows, and I am going to quote him, gentlemen—I am judging him by what he said himself and this is what Mr. Berry said:

"The lot on Carrollton Avenue was originally acquired at our suggestion at a price of \$100,000."

He told him to go ahead and buy that lot for \$100,000, and that he would take it as part trade in another deal, that he was selling him some of the bank's property for \$403,230.00.

Gentlemen, I issued a brochure on that land deal.

The St. Bernard Voice, a paper in St. Bernard Parish, wrote a front-page editorial. I have the answer to that brochure that Mr. Berry sent out and I would like to have you read it.

Six, on October 27, 1961, the writer mailed another release which was Special Release Number 6, to the stockholders of the Whitney National Bank, mailing them a copy of a petition that had been filed by the writer to examine the books of the Whitney National Bank.

The Whitney National Bank took the position that the writer had only 725 shares of the capital stock of the bank in his name and the rest was owned by the corporation which I am in charge of, that I could not see the books of the Whitney National Bank.

They further took the position that I was a [30] competitor because of my holdings in the National American Bank and under the Louisiana Corporation Act, that a competitor had to have 25 per cent of the stock of the bank in order to look at the books.

This case is now on appeal from the lower court, that is in regard to our efforts to see the books of the Whitney National Bank. This suit was filed in order that we might see if there were any more dealings like the one Mr. Berry made with one of his directors and in order that the stockholders might file a suit to recover that money.

I would like to tell you gentlemen now if this is turned down, I am going to bring a suit for the stockholders of the Whitney National Bank to recover what I believe to be approximately \$1,800,000 that went into that land deal.

We have several witnesses who will testify they were unable to bid on the property or unable to buy, even though they were willing to pay more money than was paid by the directors of the Whitney National Bank.

I want you to know that I have a letter in this file from Mr. John Schwegman, who is a large chain operator of grocery stores, super markets. I have his letter under his own signature.

I am also enclosing the editorial of the paper, St. Bernard Voice, that I spoke to you a moment ago about.

Seven, I am also enclosing a complete set of all the [31] correspondence which was exchanged between myself and Mr. Berry in this proxy fight. I trust that you gentlemen will not allow the Whitney National Bank to form this

holding company because we believe that, at this time, all they have is a mythical corporation they are trying to put into a holding company.

Eight, I believe when Congress adopted cumulative voting in national banks, they did so in order to protect the small stockholders and here comes an outfit trying to circumvent the laws of Congress.

This was best demonstrated by the Whitney National Bank on January 9, the last annual meeting of the Whitney National Bank, when they reduced the number of directors from 20 to 7 in order to prevent minority representation on the board of the Whitney National Bank.

We are positive that this is the only bank in the country of its size that has as few as 7 directors at this time.

We believe that when Congress said there should be not less than 5 nor more than 25 directors, that Congress meant that the minimum would be used in the formation or the organization of a bank but did not mean reducing the number of directors on the board of any national bank in order to prevent minority representation on that board.

To show what puppets were serving on that board, Mr. Berry had them accept his decision to cut that board as though they were all employed as regular employees of the Whitney [32] National Bank.

Therefore, gentlemen, I hope you will prevent the Whitney National Bank from forming this holding company.

Nine, at this point I respectfully request of you gentlemen, all of whom are well voiced in the banking practices existent throughout this nation, that you search your memories and knowledge to see whether or not you can point to any one single interest in which the board of directors of any large institution has been decreased by even 1, 2, 3, 4, or 5 directors.

When Mr. Berry moves, he goes all the way. He reduced the board of this bank 65 per cent by the stroke of his pen, in one single instance, on one single day.

Gentlemen, there has to be a reason and I submit that in this instance, both are ulterior in nature.

Ten, Jackson, Payne, and Webster released a statement that they were unable to obtain information from the Whitney National Bank. The information they were seeking from the bank was the income from oil and gas properties. And, gentlemen, I examined their application. In no place

do they show what they received from oil and gas, or what they received from the rental of real estate.

As you know, several of the banks in New Orleans closed during the banking holiday because they were heavily loaded with real estate. All of these banks have paid the depositors their [33] money back, plus the interest, and the stockholders have been paid a lot of money.

The Whitney National Bank had a lot of these properties. Have they paid anything? They had maintained that \$4 dividend until I got on them—and then what happened? They raised it to \$12, and they said I had nothing to do with it.

Gentlemen—but I want to tell you what they did raise, they raised Mr. Berry's salary. He couldn't get along on what he was getting when he originally started. He had to get additional money. But the stockholders had to sit there and wait.

Now, I heard him talk about an aggressive bank. I have some figures here, gentlemen.

I am not going to use the National Bank of Commerce because they started another bank in Jefferson Parish. I am going to use the High Bunyun National Bank in New Orleans.

In 1951, they were a \$155.1 million bank; in 1960, \$170 million, an increase of over 38 per cent.

First National Bank of Atlanta, in 1951, \$341 million; 1960, \$448.4 million, an increase of 30 per cent.

First National Bank of Dallas, 1951, \$508 million; 1960, \$870.9 million, an increase of 68 per cent.

Republic National Bank of Dallas, 1951, \$459 million; 1960, \$1.012 billion, over 100 per cent increase.

And now we come to the "aggressive" Whitney National [34] Bank, 1951, \$385 million; 1960, \$425 million, an increase of 15 per cent.

Now, gentlemen, I spoke to you about that charter. There are some things in here I want to tell you about.

I do not believe that you gentlemen will recommend or will let them adopt this charter for a holding company, because I know that with these provisions in the charter, that you yourself wouldn't buy any stock in it. And I have enough faith in you gentlemen that you wouldn't let someone form a corporation that would hurt other people.

I want to read it to you if I may.

This is Article VIII:

"All powers of the corporation shall be vested in a Board of Directors composed of not less than three nor more than twenty-five, the precise number of said Directors within said limit to be fixed by the Directors."

In other words, to be fixed by themselves.
Now, gentlemen, here is a lulu:

"Directors of the corporation need not be stockholders."

Now, for what earthly reason would a man want to serve on a board that is not a stockholder? Or unless he was trying to please the president of that corporation, or for a monetary consideration?

Going a little further, gentlemen:

"Any Director absent from a meeting may be [35] "represented by any other Director or shareholder, who may cast the vote of the absent Director according to written instructions, general or special, of said absent Director."

Lo and behold, the man running this corporation can give him written instruction, have him sign his name, go up on the second floor and hold a meeting with his secretary.

I tell you, this is ridiculous, to say the least.

Gentlemen, it is in here, I am going to read you another paragraph in here that is really good. It is Article VI:

"The authorized capital stock of this corporation is fixed at \$1,120,000 shares of common stock, without nominal or par value. Every share shall be equal in all respects to every other share. No transfer shall be binding upon the corporation unless recorded upon its books. All shares shall be fully paid for and non-assessable."

You gentlemen know better than that, because if the National Bank goes under, you can assess the shares of a holding company.

Now listen to this:

"Without necessity of action by the shareholders, shares of stock without par value may be issued by the corporation, from time to time"—without action by the shareholders—"for such consideration as may be fixed, from time to time, by the Board of Directors, and any and all such shares so issued, if the full fixed consideration, whether

cash and/or property [36] "and/or good will, for such shares has been paid or delivered, shall be deemed full paid stock and not liable to any further call or assessment, and the holder of such shares shall not be liable for any further payment thereon."

They can issue it for what they want to even though they are not stockholders.

Of course, it would not affect them if they were directors and they wanted to issue it, it wouldn't be hurting them; they wouldn't be diluting their stock, they don't have any.

Now, gentlemen, believe me, if they are allowed to go ahead with this charter, I am very active in 10 or 15 corporations, but in the future if I organize a corporation and this is passed, I am going to copy this corporation charter in toto and I am going to advertise that it was approved by the law firm of Monroe and Lemann, that it was passed upon by 75 per cent or over 75 per cent of the stockholders of the Whitney Bank, and it was approved by the Board of Governors of the Federal Reserve System.

Gentlemen, this is a very dangerous thing and I know that you gentlemen haven't looked at it—I know you haven't—and I wish you would before you pass on it, and I know you will.

Now, gentlemen, all the rest of the exhibits, including the land deal that I put out in this brochure (indicating), are in this file.

I want to tell you that I appreciate the opportunity of [37] appearing before you. I want to thank you. And if there is any question in my humble way I can answer, I will try to do it.

Thank you very much.

Chairman Martin: Any questions? Are there any questions anyone would like to ask?

Governor Robertson: I would like to ask a question.

You have in front of you the charter of the holding company, I take it.

Mr. Roussel: Yes, sir.

Governor Robertson: Is there any provision in that for cumulative voting?

Mr. Roussel: No, sir. None at all. It has been abolished altogether, sir.

Now, that is the idea, gentlemen. The Whitney Bank

has—who knows how many million dollars worth of assets. We have never been able to find out.

Now, when he tells you that the bank has been earning so much, it is not in the application downstairs how much is coming from oil and gas. And I know that there is a good bit of money coming from oil and gas.

But Mr. Sehrt, who is a stockholder, asked that question at the annual meeting and Mr. Berry told him, "Why, you represent the opposition. I don't know if I want to tell you that."

Gentlemen, as a stockholder, I have never been able to find that out and I have been trying, believe me. But I tell [38] you, if you leave this thing just like it is, I assure you I am going to find out—because I am going to find out in a court-house.

Chairman Martin: Does anyone else want to ask Mr. Roussel a question?

Mr. Roussel: Gentlemen, I would like to file, Mr. Chairman, if I may, all of these exhibits.

Chairman Martin: We will receive them all.

Mr. Roussel: Thank you, sir.

Mr. O'Connell: Mr. Chairman.

Chairman Martin: Yes, Tom.

Mr. O'Connell: Inasmuch as Board's counsel or the staff have not seen these exhibits, may I recommend that they be received as you have indicated, Mr. Chairman, subject to the Board's determination of the relevancy and pertinency to the issues involved in this hearing.

Chairman Martin: All right, it is so ordered.

Did you wish to say something, Mr. Sehrt?

Mr. Sehrt: Yes, sir, I certainly do.

May I proceed, sir?

Chairman Martin: Yes.

ORAL STATEMENT OF CLEM H. SEHRT, SEHRT & BOYLE

Mr. Sehrt: Mr. Chairman and members of the Board of Governors, I represent the minority, practically, that voted at the Whitney Bank meeting and, without the necessity of listing to you each and every client that I represent, among them is [39] Mr. Roussel.

I have read with a great deal of interest the plan and the application which has been submitted by the Whitney and I have some comments regarding the plan, because, while it is

apparent that the Whitney National Bank is forming a holding company to evade or avoid or to dispense with cumulative voting, nevertheless I say that the application does not conform to the law and the statute.

I hope in my humble way to be able to convince you that this application does not conform to the law.

Answering Governor Mills's question about the Parish of Jefferson, in our home state a parish is similar to a county in most states. Jefferson Parish would be part of the metropolitan area of New Orleans. However, it is a separate and distinct parish and under statutory state law, you cannot have a branch in a parish other than the parish in which that particular bank is operating.

I don't think that counsel for the Whitney or Mr. Berry would dispute the fact that he could not, as such, open a branch in Jefferson Parish. I must concede that he would have to either form an affiliate, such as the National Bank of Commerce has accomplished, or they would have to get into the Jefferson Parish area by some other manner or formation of a bank.

My appreciation of this application, the substance of it, was set forth in a communication which I sent to Mr. Saxon, [40] the Comptroller of the Currency, under date of December 22, 1961, copy of which I forwarded to this Board, which I understand from your counsel will be available for your examination.

In order to approach this thing from the standpoint of whether or not this application is a valid application conforming to the law and whether or not it should be considered, I must concisely state what Whitney attempts to do here.

The plan provides for the Whitney National Bank to furnish \$350,000 in exchange for 5600 shares of Whitney Holding Company stock.

The 5600 shares would be distributed to all of the shareholders of the Whitney National Bank in the proportion of 1/20 of one share to each share of the Whitney National Bank. The Whitney Holding Company with the \$350,000, which it receives from the Whitney National Bank, would use those funds for the organization of the Crescent City National Bank, and would receive in return 112,000 shares of the Crescent Bank at \$2.50 par value.

The Whitney National shareholders would surrender all

of their shares to Whitney Holding Company and receive in exchange 9/920 shares for each share he rendered.

The net effect, finally, would be that the Whitney National Bank shareholders would have 10 shares of the Holding Company stock for each share of Whitney National Bank stock.

Now, that is the plan. That is the substance of the [41] plan and that is the net result if the plan is accomplished.

The Whitney National Bank has presented to the Comptroller a set of articles of association in which it says, "We propose to form a bank—to wit: for the sake of convenience—called Crescent, and here are our articles of association."

Now bear in mind, gentlemen, that bank has not come into being. That bank does not exist. It is merely a set of articles of association signed by certain directors and submitted to the Comptroller under a form that would conform to the National Banking Laws, either acknowledged before an officer or a notary public qualified to give an oath.

However, the Crescent Bank is not in being. The Comptroller has not given it a permit. It is merely a paper corporation filed with the comptroller.

The Crescent has no stockholders. The only funds that would be available to Crescent through the holding company situation—which of course has not been approved by this body, which you are here today for—the funds are taken from where? The funds are taken from the Whitney National Bank's treasury to create what? To create a symbol, to create a set of articles of incorporation which they say is a proposed bank, and they take the money out of one pocket and they put it over here and they say, "We propose to create the Crescent Bank."

Now the Crescent Bank does not exist. It has no stockholders. It has no depositors. It has no place from which [42] it can do business. It cannot even do business until such time as the Comptroller says, "I give you a permit: you have a right to function."

It exists how? It exists by virtue of the funds, the funds supplied to it by Whitney National.

Now, the statute provides—and I have examined all of the hearings under the Holding Company Act and I have examined these committee reports, and I can find nowhere in these committee reports or in these hearings or in this statute where there is provision for the consolidation of a

nonexistent bank, for the consolidation of one bank with a bank that has never functioned, with a bank that has never existed for a day, with a bank that doesn't have a single stockholder, with a bank that has never functioned.

I say the purpose of this holding company statute and the general provisions of the law is that a consolidation must take place of two banks that exist in law and in fact. And I say, gentlemen, that Crescent does not exist in law until such time as the Comptroller gives them their permit, and it does not exist in fact because it has never functioned a day, it has had no place from which to function, it has had no headquarters, it has no minute book, it has no stock book, it has no minutes of its board of directors—it is a myth. It is a paper corporation, a shell—which they say will come into being.

Now, how do they say it comes into being? They have a [43] long agreement here which they call a consolidation agreement and which in effect accomplishes exactly what I set forth in brief at the outset of my discussion.

If this plan is adopted and the shareholders have voted it, what happens? The charter—this piece of paper (indicating) filed with the Comptroller—becomes the charter of the consolidated bank and the name, Crescent, is changed to what? The name Crescent is changed to Whitney National Bank. And what is that? The name Crescent is changed to the Whitney National Bank, which is the exact bank which exists today—the Whitney National Bank.

So I have branded this in a communication to the Comptroller and I have told him verbally—and I tell you, gentlemen—that this is a legal maneuver, it is a scheme to evade the provisions of the Holding Company Act and to accomplish a holding company not by the means set forth by the Congress of the United States. Because you begin with a Whitney National Bank which itself takes its own funds, which it doesn't have a right to do under the banking laws, and puts them over here and creates Crescent, and then says Crescent, you merge with us and when we get through merging or consolidating, we are what? We are the same thing we started out with: Whitney National Bank—with the same articles of association and the same charter, the same assets, the same directors, same president, same officers, the same everything.

[44] So I say that this is merely a figment which has been

created to attempt to meet the provisions of the Holding Company Act.

Now I say, further, that in the amendment of 1956—and I am reading from Section 1845, it says that “From and after May 9, 1956, it shall be unlawful for a bank to invest any of its funds in the capital, stock, bonds, debentures, or other obligations of a bank holding company of which it is a subsidiary or any other subsidiary of such bank holding company.”

Now, what would Whitney National Banking if you gentlemen approve this application?

If you approve this application and the Comptroller approves this consolidation and merger, the Whitney National Bank will have accomplished indirectly what that statute prohibits them from accomplishing directly.

They can't invest their money in a holding company. And the statute so provides with the amendment of 1956. But they will have invested their money in a holding company, they will have put \$153,000 in a holding company to create a holding company.

At the conclusion of the maneuver or the scheme, you will have one entity, the same entity that began.

Now, gentlemen, that is not a merger; that is not a merger within the purview of the law.

This act itself sets forth what is a merger and it [45] sets forth what is a consolidation. In brief, under Section 89, it says: “One or more national banking associations with the approval of the Comptroller”—one or more national banking associations with the approval of the Comptroller—“can make a consolidation or a merger.”

You can't merge with yourself. You can't consolidate with yourself. You can't create some figment merely on paper so you can accomplish a merger.

And I say to you gentlemen at the conclusion, you have what? You have the same Whitney National Bank—with what?—with the shareholders no longer owning the shares of the Whitney National Bank, but the shareholders owning 10 shares of the Whitney Holding Company. And the Whitney Holding Company has destroyed, has written out with its pen the right of cumulative voting.

The whole scheme is an evasion, of course, to write out the privilege of cumulative voting.

Now assuming for the sake of discussion that the plan

is approved, which I say it should not be, and assuming that the Comptroller approves the consolidation—and I am satisfied his office has tentatively approved it because your records should show that, and he has told us that they have tentatively approved it which I understand is sort of preliminary approval—assuming it is approved, what does the Whitney Holding Company do? It then takes what? It takes \$650,000 of its funds and it [46] another piece of paper filed in the Comptroller's office—wit: A charter for the Jefferson Bank—which will be its branch in Jefferson if you want to call it such, the branch on the west side of the river if it calls it such.

It again dips into the same funds—of course, it is then a “holding company.” It is then in being. And it then exists in fact as well as in law, which it does not now.

I say it does not exist, in fact it does not exist in law as a holding company until you approve it, and Crescent doesn't exist until it has a permit, which it doesn't have. And I say you can't merger with yourself.

But if it is all accomplished, they dip in and create a Jefferson Parish bank or a Jefferson Parish bank and some branches in Jefferson Parish for operation with Whitney funds.

I say to you gentlemen, and I have said it publicly and I have included it in a communication, I don't think that this Board has ever approved such a legal maneuver and I don't think that it is within the realm, nor was it contemplated by the acts of Congress that this type of legal maneuver should be permitted and sanctioned by this Board, to do what? To permit Whitney National Bank to do indirectly that which legally they cannot do directly. And I don't think that you gentlemen should lend yourselves to permit them to do indirectly that which the law directly prohibits them from doing.

I say, gentlemen, that this application, if it is [47] analyzed carefully and if the statute is analyzed carefully, and the purpose and meaning and intent of the Holding Company Act, that it is an invalid application and does not meet the requirement of the statute.

I thank you, gentlemen.

I will be happy to answer any question that you might like to ask me.

Chairman Martin: Does anybody want to ask a question of Mr. Sehart?

Governor Mitchell: I would like to ask a question of both of these gentlemen, or a couple of questions.

If the right of cumulative voting were retained, would you oppose this plan or the Whitney to expand in the Jefferson Parish?

Mr. Roussel: I would like to answer your question on that, sir.

If you will put in that holding charter that they should have a sufficient amount of directors and they would have cumulative voting, I would be for it. Because the small minority stockholder would then have a chance to fight it. But if they remove cumulative voting—as you know, it is pretty hard fighting a bank of that kind. They have a guy selling a piece of land to their own directors and they tell you there is nothing wrong with that.

I know not one of you gentlemen—and I would be [48] willing to bet—would say a corporation should sell something to its own director. I know you wouldn't do that.

If that were put in there, if you would make them put in that holding company that they would have a fair number of directors for the size of the corporation it is, and cumulative voting, I will be for it—I will be for it.

Mr. Sehrt: Also, of course, you would not want them to permit a director to give his fellow director a proxy.

Mr. Roussel: That is another thing.

Mr. Sehrt: And you would not want a director—several directors—to give their proxy and the president have the privilege—I am not saying he will do it, but he will have the privilege of soliciting them and going and holding a meeting.

I am not saying I am for what Mr. Roussel just said. I will not be for it because I say it does not conform to the law. I will have to tell you that I would have to be consistent and say it does not conform to the law; they can't accomplish it in this way.

Governor Mitchell: I have one further question.

Chairman Martin: All right.

Governor Mitchell: Do either of you gentlemen own or, say, control associations or companies that own stock in other banks in New Orleans metropolitan area?

Mr. Roussel: Yes, sir, I do—not control; I don't [49] have absolute control of any bank.

Governor Mitchell: But you do own stock in other banks?

Mr. Roussel: I own stock in four other banks, sir.

Governor Mitchell: In the New Orleans metropolitan area?

Mr. Roussel: No, three in the metropolitan New Orleans area and one outside the metropolitan area.

Governor Mitchell: I see.

Mr. Sehrt: And, sir—

Governor Mitchell: And some of these banks are in Jefferson Parish?

Mr. Roussel: Yes, sir, one in Jefferson Parish, the Merchants Bank.

Mr. Sehrt: In answer to you, sir, I own no stock in any bank in Jefferson Parish.

I am a small stockholder in Whitney National Bank. I hold several hundred shares of stock in the National American Bank.

I do own some stock in a bank in St. Bernard Parish which is the other end of the metropolitan area, not in the direction—going down river.

Governor Mitchell: That is all I have.

Mr. Sehrt: I might add, because my opponents might feel I have failed to add it, my firm is attorney for the [50] down-river bank, the Peoples Bank and Trust Company. I am associated with the firm. Sehrt and Boyle. I am senior member of that board. And we are also attorneys for the National American Bank. I am a director for the National American Bank.

I wanted the record to be complete, sir.

Chairman Martin: Any other questions? (No response)
If not, thank you, Mr. Sehrt and Mr. Roussel.

Mr. Sehrt: Thank you.

Mr. Roussel: Thank you.

Chairman Martin: Now shall we go on to Mr. Passera before we give Mr. Berry and Mr. Monroe a chance to rebut?

Mr. O'Connell: Yes, sir.

Chairman Martin: Would you like to proceed, Mr. Passera?

Mr. Passera: If I may, sir.

Chairman Martin: Right.

ORAL STATEMENT OF VICTOR J. PASSERA, JR., PRESIDENT, THE NATIONAL BANK OF COMMERCE IN JEFFERSON PARISH

Mr. Passera: If I may, I will stand. I am not going to take that much time.

My name is Victor J. Passera, Jr. I have the privilege

of being the President of the National Bank of Commerce in Jefferson Parish.

I sincerely appreciate, gentlemen and Mr. Chairman, the kindness of the honorable members of the Board to let me speak—and, Mr. Berry, I appreciate your courtesy.

My appearance, gentlemen, here today—first may I [51] say that I, of course, feel a little bit awed in the presence of such distinguished gentlemen. I must confess that.

My appearance today is motivated by my responsibilities to the shareholders of the National Bank of Commerce in Jefferson Parish, to the Directors, to the members of my staff; I'm also motivated by my own responsibilities to the office which I hold; and beyond that, in the public interest of the shareholders, the residents of the Jefferson Parish area who have interest in the other parish banks.

Our opposition to the holding company is primarily two-fold:

First, for the past two years, 1960 and 1961, the deposits and the earnings of the parish banks have not been appreciably great.

Secondly, we feel that there is perhaps a circumvention of Section 7 of Regulation Y.

We feel that at this particular moment, there is no need for additional new banking facilities within Jefferson Parish, specifically the east bank.

We also feel that such creation of new banking facilities would act as a deterrent on the growth of the existing banks as well as the earnings of the existing banks.

I sincerely appreciate your kindness.

Governor Balderston: Mr. Chairman, may I ask Mr. Passera a question?

[52] Mr. Passera: Surely.

Governor Balderston: In the communication on which you were one of the signers, you indicated that there is, and I quote, "no indication of development, either industrially or residentially, in the areas of the proposed bank and its branch."

Now, that statement seems to contradict something that Mr. Berry told us earlier.

Mr. Passera: At the time of the signing of that, sir, that was absolutely true.

The economy of Jefferson Parish has remained at a standstill and was at a standstill during the two years that I have mentioned—standstill in that sense of the word.

Surely there was growth in the parish, but not the astounding or astronomical growth the parish had experienced, the east bank specifically, prior to the year 1960.

At that time, the growth had been retarded, was retarded. Since that time there are, as Mr. Berry mentioned, several industries moving into the parish and probably will become existing after the first of the year.

Does that answer your question, sir?

Governor Balderson: Thank you.

Commissioner Martin: Does anyone else want to ask a question?

Governor King: I would like to ask one question.

[53] Mr. Passera: Yes, sir.

Governor Balderston: Recognizing the fact that your own institution and the proposed institution would be more or less arms of both large and strong organizations, would you really think that because one necessarily would happen to be in first, it should more or less pre-empt the territory for others that were strong and felt they could more or less subsidize to some extent a new institution which would give some additional competition, certainly—certainly it would affect the other banks in the area. But assuming that one fairly large and strong institution went in, would you really think it was fair to deny another entry? Recognizing the fact that they were both more or less arms of strong banks?

Mr. Passera: Mr. Governor, the answer to your question is obviously "no," sir; we have no pre-empting rights.

Chairman Martin: Are there any other questions of Mr. Passera? (No response)

Thank you, Mr. Passera.

Mr. Passera: Thank you, sir.

Chairman Martin: All right, we will give Mr. Monroe and Mr. Berry time for rebuttal.

REBUTTAL STATEMENT OF MALCOLM L. MONROE, MONROE & LEMANN, NEW ORLEANS, LOUISIANA

Mr. Monroe: If I may take just a moment.

With respect to Mr. Roussel's statements, all but the items with respect to the charter that he referred to are matters governing the internal control of the Whitney Bank, all are [54] matters that have been fully taken up or disclosed or subject to examination by the Comptroller. The Comptroller's files have full reports. They are not within the

desires, as I understand it, of this Board to go into the matters of bank administration. And the Comptroller's examiners have been into every matter that has been discussed by him.

With respect to the charter, inasmuch as that is a matter that has been filed here and was filed here on September 1st, under cover of our letter, and is already in the record, I would like to read from my letter momentarily, briefly, transmitting that to Mr. Denmark, my letter of September 1st. I said, in transmitting the charter:

"As I explained in previous conferences with representatives of the Federal Reserve Bank and the Comptroller's office, this charter, of course, is the skeleton charter filed primarily for the purpose of the holding corporation's name. It is contemplated that upon basic organization meeting of the board of directors of the Whitney Holding Corporation, the real parties in interest will appear. The form of the charter is simply taken from the standard, recommended form of Louisiana charter and contains routine provisions."

It is a charter I drew myself. It is taken out of the form book prepared in the form suggested by Mr. Charles E. Bunbar, who is now deceased, the leading corporation attorney and professor at GLM Law School. That is where those provisions come from [55] that are represented to you as being so drastic by Mr. Roussel.

I have also said to your staff that if the Federal Reserve believes that any particular provision should be amended in order to be more in conformity with the policy of the Federal Reserve, I am sure this can be easily carried out.

I would say about the same proportion of Mr. Sehrt's remarks deal with matters that are under the jurisdiction of the Comptroller. The only matter that the Whitney Holding Corporation is before this Board for is the holding corporation's application to form the bank in Jefferson Parish.

As Mr. Berry has already so carefully pointed out, we would have proceeded with the complete reorganization of the Whitney into a holding company in Avoyelles Parish. We were advised it was completely legal by the attorneys of the Comptroller. But the Comptroller advised us that he did not want us to reorganize the bank in Avoyelles Parish unless we were assured of going forward with the meat of the program, which was moving into Jefferson

Parish, and therefore his approval has been conditional on the approval of this board to go into Jefferson Parish. However, the questions addressing themselves to the legality and the wisdom of reorganizing the Whitney in Orleans have been passed on and have been up before the Comptroller for more than 6 months and have been passed on by him and are within his jurisdiction.

We have handed you his approvals in the first two [56] exhibits we handed you this morning showing that he has approved this entire program as a banking program. And from his point of view, he has approved the organization of a bank in Jefferson Parish as a desirable banking feature.

I don't think I have anything more to say except the matter before you now is going into Jefferson Parish and certainly there have been many examples of applications to you for holding corporations to form banks in other areas. Naturally they take their own assets to form it.

We feel that one of the strengths; the large strength in our position is that we are forming a new bank and not absorbing an existing institution and thereby eliminating that competitor.

I would like to finally point out that our charter for the Crescent City Bank is executed, is on file with the Comptroller; it is a legal entity. The application to consolidate with the Whitney has been executed by both banks, both meetings, stockholder meetings, have been held and they have overwhelmingly approved it, and that is just ready for routine completion.

I would like this record, if I may, to stay open for the purpose of filing the final executed copy in the record as a routine matter of the charter of the Crescent City Bank.

Chairman Martin: Does anyone want to ask any questions?

(No response)

[57] Thank you very much.

Mr. Monroe: Thank you very much.

Chairman Martin: Tom, do you want to comment at this juncture?

Mr. O'Connell: Mr. Chairman, the Board has now received presentations by all persons who have requested the right to make the same and, in addition, has received Mr. Passera's statement.

Unless there are other matters by the Board, it would appear appropriate you might close the proceedings.

Chairman Martin: Do you want to make any further statement for the record or have you covered everything?

Mr. O'Connell: I believe I have covered everything that should be covered, Mr. Chairman.

Chairman Martin: Would anyone else, either Mr. Sehart or Mr. Roussel, like to say anything further?

Mr. Roussel: No, thank you, sir.

Mr. Sehart: No.

Chairman Martin: And you have nothing further, Mr. Berry?

Mr. Berry: No, thank you. I think we have taken enough of your time.

Chairman Martin: Thank you very much.

The meeting is adjourned.

(Whereupon, at 11:35 a.m., the oral presentation in the above-entitled matter was concluded.)

Filed June 20, 1962

EXHIBIT 5

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
Washington 25, D. C.

Address Official Correspondence to the Board

May 3, 1962.

Comptroller of the Currency,
Treasury Department,
Washington 25, D. C.

Dear Sir:

The Board of Governors has today approved the application of Whitney Holding Corporation, New Orleans, Louisiana, for permission to become a bank holding company by acquiring the stock of Crescent City National Bank and Whitney National Bank in Jefferson Parish.

Enclosed are the Board's Order of this date, the accompanying Statement, and the press release on this action. Also enclosed are a Concurring Statement of Governor Mitchell and a Dissenting Statement of Governor Robertson.

Very truly yours,

MERRITT SHERMAN,
Secretary.

Enclosures

FEDERAL RESERVE

For immediate release

May 3, 1962.

The Board of Governors of the Federal Reserve System today announced its approval of an application by Whitney Holding Corporation, New Orleans, Louisiana, for permission to become a bank holding company by acquiring substantially all of the stock of a bank that would continue the business of the existing Whitney National Bank of New Orleans, under that title, and substantially all of the stock of the Whitney National Bank in Jefferson Parish, Louisiana. The Whitney National Bank in Jefferson Parish is a new bank to be located in a part of the New Orleans metropolitan area lying immediately west of that city. Attached are copies of the Order and Statement of the Board, the Concurring Statement of Governor Mitchell, and the Dissenting Statement of Governor Robertson.

Attachments

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE
SYSTEM

Washington, D. C.

In the Matter of the Application of: WHITNEY HOLDING CORPORATION for approval of its becoming a bank holding company by acquiring the stock of Crescent City National Bank, New Orleans, Louisiana, and Whitney National Bank in Jefferson Parish, Jefferson Parish, Louisiana.

ORDER APPROVING APPLICATION UNDER BANK HOLDING
COMPANY ACT

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 USC 1842) and section 222.4(a)(1) of Federal Reserve Regulation Y (12 CFR 222.4(a)(1)), an application on behalf of Whitney Holding Corporation, New Orleans, Louisiana, for the Board's prior approval of action whereby Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the vot-

ing stock of (1) the Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Jefferson Parish, Louisiana (a proposed new bank). A Notice of Receipt of Application was published in the Federal Register on July 28, 1961 (26 Federal Register 6792), which provided an opportunity for submission of comments and views regarding the proposed acquisitions, and the time for filing such comments and views has expired and all comments and views filed with the Board have been considered by it. Pursuant to Order published in the Federal Register on December 23, 1961 (26 Federal Register 12312), a public proceeding with respect to the application was held before the Board on January 17, 1962 to provide a further opportunity for the expression of views and opinions by interested persons.

It Is Ordered, for the reasons set forth in the Board's Statement of this date, that said application be and hereby is granted, provided that the acquisitions approved herein shall not be consummated (a) sooner than seven calendar days after the date of this Order or (b) later than three months after said date, and provided further that Whitney National Bank in Jefferson Parish shall be opened for business within six months after said date.

Dated at Washington, D. C., this 3rd day of May, 1962.

By order of the Board of Governors.

Voting for this action: Chairman Martin, and Governors Balderston, Mills, Shepardson, King, and Mitchell.

Voting against this action: Governor Robertson.

(Signed) MERRITT SHERMAN,
Secretary.

(Seal)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

APPLICATION BY WHITNEY HOLDING CORPORATION FOR PERMISSION TO BECOME A BANK HOLDING COMPANY

STATEMENT

Whitney Holding Corporation, New Orleans, Louisiana ("Applicant"), has applied to the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (the "Act") for approval of action that would cause it to become a bank holding company under the Act, namely, its acquisition of all of the stock of Whitney National Bank of New Orleans ("Whitney New Orleans")* and all of the stock of Whitney National Bank in Jefferson Parish, Louisiana ("Whitney Jefferson").

Whitney New Orleans is by far the largest banking institution in the City of New Orleans and the State of Louisiana, and is one of the largest banks in the South. New Orleans, with a population of 627,525 according to the 1960 census, is a major seaport and financial and industrial center.

Whitney Jefferson is a new bank, organized by Applicant, and has not yet commenced operations. It is to be located in an area known as the East Bank of Jefferson Parish ("East Bank"), which adjoins the City of New Orleans on the west.

Under the law of Louisiana, a bank may not establish branches outside of the parish in which its head office is situated. (A Louisiana "parish" is comparable to a "county" in other States.) The boundaries of Orleans Parish are coterminous with the boundaries of the City of New Orleans, and consequently banks situated in New Orleans (including national banks) may not establish branches beyond the city limits.

* The application refers to "Crescent City National Bank" rather than to "Whitney National Bank of New Orleans". However, Crescent City National Bank is only the temporary title of a bank that will continue the business of the present Whitney National Bank of New Orleans under the latter title. For the sake of clarity, this statement refers to Whitney National Bank of New Orleans and disregards the temporary title "Crescent City National Bank".

Like many other large American cities, the City of New Orleans has become the central portion of a metropolitan area that extends far beyond the municipal boundaries. A large part of the expansion of population and business in New Orleans metropolitan area has taken place in Jefferson Parish, which adjoins the city on the west and south, as well as into St. Bernard Parish, which lies to the east. The West Bank area of Jefferson Parish is separated from most of New Orleans by the Mississippi River, but the East Bank area (in which Whitney Jefferson is to be situated) is not physically separated from New Orleans, but forms a continuous and homogeneous westward extension of that city.

Views and recommendations of the Comptroller of the Currency.—In accordance with the requirement of section 3(b) of the Act, the Comptroller of the Currency was asked to submit his views and recommendations with respect to the pending application. In a letter dated October 11, 1961, Comptroller of the Currency Ray M. Gidney recommended approval.

Statutory factors.—Section 3(c) of the Act requires the Board to take into consideration the following five factors:

(1) the financial history and condition of the holding company and banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, need, and welfare of the communities and the area concerned; and (5) whether or not the effect of the acquisitions would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

Discussion:—The stated purpose of the proposed holding company system is to enable an organization centered about Whitney New Orleans to provide banking services not only through its existing 12 offices within the City of New Orleans but also through offices in the East Bank of Jefferson Parish. The holding company system will be under the direction of the present executive management of Whitney New Orleans; in fact, for present purposes the holding company itself is simply the means by which Whitney banking offices may be established and operated in East Bank. Consequently, the character of the management and the pros-

pects of the Applicant and its two proposed subsidiary banks may be evaluated largely on the basis of the financial history and condition, character of management, and prospects of Whitney New Orleans.

The financial history of Whitney New Orleans has been satisfactory. The condition of that bank is sound and its management is regarded as satisfactory. Accordingly, it is believed that the management of Applicant and Whitney Jefferson will be satisfactory and the prospects of the holding company, which depend principally upon the prospects of Whitney New Orleans, are favorable.

To the extent that the prospects of Whitney Jefferson depend upon the quality of its management, those prospects also are favorable, since Whitney Jefferson will be subject to general policy direction by Applicant, and Applicant may be expected to provide competent local management for Whitney Jefferson. However, the prospects of Whitney Jefferson, as a separate banking institution, also depend, to a large degree, on the extent to which it can attract deposits, make profitable loans and investments, and otherwise conduct its business safely and profitably.

In the decade 1950-1960, while the population of the City of New Orleans increased 10 per cent (from 570,000 to 628,000), the population of the East Bank of Jefferson Parish increased 123 per cent (from 60,000 to 137,000). Although there can be no assurance of the continuance of this exceptionally rapid rate of growth, the geographical situation in the New Orleans area is such as to create a substantial likelihood of considerable further growth in East Bank. In addition, it is important to note that Whitney New Orleans presently holds deposits of individuals, partnerships, and corporations, emanating from East Bank, in an aggregate amount exceeding 30 per cent of such deposits held by all banks having their head offices in East Bank. It is reasonable to anticipate that a substantial portion of East Bank deposits in Whitney New Orleans will be transferred to Whitney Jefferson when it opens for business. Because of this circumstance, as well as the relationship that would exist between Whitney Jefferson and Whitney New Orleans, it is concluded that the prospects of the former, from this viewpoint also, are favorable, despite the increase in recent years in the number of banking offices situated in East Bank.

If the proposed holding company system is created, Whitney New Orleans will continue to render, through its 12

offices in the city, banking services of the scope and character presently rendered by it. Accordingly, consummation of the proposal will not affect the convenience, needs, or welfare of the New Orleans area, as far as the future operations of Whitney New Orleans are concerned.

Whitney Jefferson, however, will be a new banking institution, and therefore its establishment necessarily will affect the convenience, needs, and welfare of the communities and the area it will serve.

The proposed head office of Whitney Jefferson will be situated approximately one mile from the nearest competing banking office. Its establishment and operation, therefore, will serve the convenience of residents and business establishments in its immediate neighborhood, and will also provide a readily available alternative source of banking services to residents and business establishments in a wider area. At present, only two banks serve the area within four road miles of the proposed head office location of Whitney Jefferson. Both of these are well-established institutions, and the entry of Whitney Jefferson, in addition to the added convenience, may also contribute to the welfare of the area by strengthening local banking competition with resulting improvement in the scope and quality of services rendered by each of the competing institutions.

In addition to its head office, Whitney Jefferson has applied to the Comptroller of the Currency for authority to establish a branch in the Airline Park Shopping Center, about three and one-half miles northwest of its head office; the latter would be located near the Mississippi River in a more industrialized section of East Bank. The branch application is pending before the Comptroller of the Currency, who has not, as yet, either approved or disapproved the proposed branch establishment.

On March 1, 1962 the new Metropolitan Bank of Jefferson opened for business in the Airline Park Shopping Center, which would also be the location of the proposed branch of Whitney Jefferson. Any immediate contribution by such branch of Whitney Jefferson to the convenience, needs, and welfare of the area necessarily is considerably lessened by the fact that the area is already served by a banking institution. In addition, there may be some question as to whether adequate and sound banking, as well as the public interest generally, would be promoted by establishment, in

the Airline Park Shopping Center, of a banking office affiliated with the largest bank in Louisiana, so soon after the opening there of a new independent bank. However, the unfavorable significance of this factor is somewhat lessened by the rapid growth of the East Bank area, which suggests a greater than usual likelihood that two new banking offices in the same area might achieve, within a reasonable time, a scale of business that would permit both to operate soundly and profitably.

It is also significant that the Comptroller of the Currency has held the branch application in abeyance since before the establishment of the new Metropolitan Bank of Jefferson. Primary responsibility for deciding whether establishment of the branch would be in the public interest lies with the Comptroller, and it seems reasonable to assume that the branch will not be authorized if its presence would threaten the sound and serviceable operation of the newly-established bank in the Shopping Center.

Perhaps even more important than service rendered to new customers, from the viewpoint of convenience and welfare, is the service that Whitney Jefferson could render to individuals and business organizations in East Bank that already are customers of Whitney New Orleans. As mentioned, Whitney New Orleans, through its offices in the city, draws a substantial amount of deposits from East Bank. Since Whitney New Orleans draws this business despite the lesser convenience, for customers in East Bank, of dealing with a banking office in New Orleans rather than one in East Bank itself, it may be inferred that doing business with Whitney offers to its customers in East Bank benefits that are sufficient, in their judgment, to outweigh the lesser convenience.

Although some of Whitney New Orleans' East Bank business may remain with that institution, it is almost certain that a substantial part will be transferred to the affiliated Whitney Jefferson. Whitney customers in East Bank, therefore, will benefit from the convenience of doing business at a local office that can furnish, more conveniently than at present, the services that originally gained this business for the Whitney organization. Whatever special characteristics of Whitney service drew a considerable volume of East Bank business to Whitney offices in New Orleans will now become available not only to existing Whitney

customers but to others in East Bank who have not heretofore found it convenient or feasible to deal with Whitney New Orleans.

In this aspect, the pending proposal to establish banking facilities in East Bank through the holding company device is due to the natural and legitimate desire of a bank in an expanding metropolitan area to furnish its services more conveniently to customers situated in a section that, although outside the corporate limits of Orleans Parish, is realistically an integral part of the metropolitan economy. The laws of Louisiana do not prohibit expansion of a banking organization by this means. In the judgment of the Board, this phase of the proposal is a proper expression of the character of the American business system—in some respects, in fact, it is a matter of economic self-defense—and ought not to be frustrated unless it involves effects significantly detrimental to the public interest.

Under section 3(c)(5) of the Act, the question arises whether Applicant's acquisition of the stock of Whitney New Orleans and Whitney Jefferson would expand the size or extent of the proposed holding company system beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition. Mention has been made of the possible effect of the establishment of the proposed branch of Whitney Jefferson upon adequate and sound banking in its immediate vicinity. Apart from this aspect, it appears that the proposal would add a sound and serviceable institution to the financial organizations situated in East Bank.

From the viewpoint of concentration of banking facilities, the significance of establishment of the proposed holding company system might seem at first blush to be relatively slight. On June 30, 1961 Whitney New Orleans held 39 per cent of total deposits of banks in New Orleans and 44 per cent of all deposits of individuals, partnerships, and corporations. The establishment of the holding company system would not increase Whitney New Orleans' proportion of the city banks' deposits; in fact, the anticipated transfer of some accounts from Whitney New Orleans to Whitney Jefferson would slightly reduce the percentages held by Whitney New Orleans. Initially, the deposit business of Whitney Jefferson may consist largely of such accounts transferred from the affiliated city bank, and it does not appear probable that the predominance of Whitney

banks in the New Orleans metropolitan area will be immediately increased as a result of the instant proposal.

However, the fact that a relatively high proportion of banking resources in the New Orleans metropolitan area is already concentrated in Whitney New Orleans does not demonstrate the propriety of an equal degree of concentration in a holding company system. It has been pointed out that "the Act relates to concentration of banking power, not in the hands of banks, but in the hands of bank holding companies." *Matter of First New York Corporation* (1958) 44 Federal Reserve Bulletin 902, 913-14.

It does not appear to the Board, however, that the degree of concentration of banking resources in the proposed holding company system would be such as to jeopardize the vigor of banking competition either in the City of New Orleans or in East Bank. The management and policies of the holding company system, it appears, would be equivalent to those of Whitney New Orleans. On the record before the Board, it appears that a comparable degree of concentration in that bank has not adversely affected the local competitive situation. In this connection, it is to be noted that there appears to be no trend toward increasing dominance of Whitney in the area; Whitney's share of the total deposits of the metropolitan area diminished from 38 per cent to 35.4 per cent between 1956 and 1961.

Some cases presented to the Board under the Act involve a proposal for holding company acquisition of control of banks that compete with each other. These situations necessarily involve the elimination of some banking competition. No such problem is presented by the pending application. The only existing bank involved is Whitney New Orleans. Consummation of the plan will bring into existence a new banking institution, Whitney Jefferson, which will be an additional competitor in the banking situation in the western sector of the New Orleans metropolitan area. By thus offering the banking public of that district one more alternative source of banking services, the proposal would tend to increase the vigor of competition. Apart from the possible adverse competitive effect of the proposed branch of Whitney Jefferson, previously mentioned, there is no reason to believe that the increased competition would be destructive rather than beneficial.

It is especially noted that East Bank is already served by several offices of a bank that is affiliated with Whitney

New Orleans' largest competitor. Establishment of Whitney Jefferson, therefore, will introduce into East Bank a new and possibly important sort of competition—that is, competition between local banks affiliated with large banks in the nearby city and consequently in a position to offer the special services that may be available as a result of such affiliation.

Viewing the relevant facts in the light of the general purposes of the Act and the factors enumerated in section 3(c), it is the judgment of the Board that the proposed acquisitions would be consistent with the statutory objectives and the public interest and that the application should be granted.

May 3, 1962

CONCURRING STATEMENT OF GOVERNOR MITCHELL

In my judgment, there are two issues of concern in this case.

The first issue is whether an increase in concentration would come about from approving the application. Whitney presently accounts for about 35 per cent of New Orleans metropolitan area deposits. Whitney's present position is a *fait accompli*: No matter how Whitney Holding Corporation divides its deposit share among the banks it may create, its present share will not be changed. The Whitney organization would *still* have 35 per cent of area deposits even if it were to create and operate a score of banks. This is because the plan of the application does not include purchasing other banks but rather intends *de novo* facilities to be established in East Bank. Thus, approval of this action will not increase concentration by any meaningful measure whether deposits, loans, assets, or offices are used. Whitney has what it has.

Will "concentration" increase in the future? If Whitney can convince *increasing* numbers of individual and corporate depositors and loan applicants to bank with its new set of offices because it offers better services and more attractive rates, then we might expect its share of deposits and loans to increase. Denying this application on grounds of containing an anticipated increase in "concentration" of this sort would be denying one of the very things this Board is directed to preserve, competition.

The second issue is whether approval of this application would produce an "overbanked" situation in the East Bank of Jefferson Parish.

The use of "overbanking" as a policy criterion may have been justified in a time when the creation of banks was imperfectly regulated and deposits uninsured. The obsolescence of this concept is apparent in today's context of widespread deposit insurance and regulation of entry by State and Federal agencies based on responsible management and adequate capital. To impose *further* restrictions on entry by deciding, *ad hoc*, that a given area may become "overbanked" if another competitor is admitted is to preserve comfortable closed markets for established institutions. Decisions with this effect can only be hostile to the public interest.

Since this Board does not possess perfect foresight, it

must depend on some rough and general rules of thumb if it is to avoid decisions harmful to the public interest. The fact that the "overbanked" community of today may be the "underbanked" community of tomorrow if the growth of the community is rapid and substantial suggests that such rules of thumb might be formulated in terms of trends in population, in business expansion, and in deposits. Strong upward movements in these indicia would shortly undo any initial condition of "too many" banks.

What can be said in terms of these rules of thumb in the present case? The population of Jefferson Parish has more than doubled since 1950. The Federal Reserve Bank of Atlanta reports that further residential growth in the area is assured. Rising business activity in the East Bank area reflects a growing industrial community. Reserve Board data on deposits of individuals, partnerships, and corporations show that deposits increased by more than 300 per cent and deposits per capita in Jefferson Parish have increased by more than 100 per cent in the past decade, outstripping any other urban parish in the State. The average *annual* rate of deposit growth of First National Bank of Jefferson Parish, of Gretna, was 10 per cent over the 10-year period 1951-61. Merchants Trust and Savings Bank of Kenner has averaged 25 per cent and Metairie Savings Bank and Trust Company 12 per cent over the same period. National Bank of Commerce in Jefferson Parish has averaged 7 per cent in its six years of operation. Taken together, these data indicate that an "overbanked situation" could not exist for long in Jefferson Parish.

Approval of this application will strengthen competition by allowing a New Orleans banking organization to operate through de novo facilities in the rapidly growing East Bank of Jefferson Parish. Rejection of the application would preserve sanctuary for existing Jefferson Parish banks or lead to indirect entry by Whitney through a device with less competitive impact.

May 3, 1962

DISSENTING STATEMENT OF GOVERNOR ROBERTSON

Whitney National Bank of New Orleans is the largest banking institution of the City of New Orleans and the State of Louisiana. It controls in the neighborhood of 40 per cent of the deposit and loan business of all New Orleans banks—more than the second and third largest banks combined. The proposal before the Board of Governors would place control of this bank in Whitney Holding Corporation and thereby would overcome the effect of the branch banking laws of Louisiana, which prevent Whitney from establishing any offices outside of Orleans Parish (the City of New Orleans). In other words, by this means the Whitney banking organization would escape the legal limitations that now permit it to have offices only within the City of New Orleans.

In my judgment, one of the basic purposes of the Bank Holding Company Act—to prevent undue concentration of banking power in holding companies—would be unjustifiably defeated by approval of the creation of a holding company system to control the predominant bank of a major metropolitan area and additional banks within that area, *unless* such approval is warranted by favorable factors that outweigh this strong adverse consideration.

No such substantial favorable factors have been established in this case. It can hardly be asserted that the East Bank of Jefferson Parish would lack adequate banking facilities unless Whitney Holding Corporation is permitted to establish and control the proposed Whitney National Bank in Jefferson Parish. New banks and branches are being established in East Bank at a quite rapid rate, and the neighborhoods in which Whitney Jefferson would have its offices already have banking facilities conveniently available.

The establishment of additional banks and branches always contributes, in some measure, to the convenience of the banking public, and also, in many cases, to the vigor of banking competition. Ordinarily, therefore, establishment of additional banking facilities is beneficial from these viewpoints. In this case, however, banking offices affiliated with the largest financial institution in the area would be competing with small local banks, including a bank that opened for business only two months ago in the same shopping center in which it is proposed to locate one of the

offices of Whitney Jefferson. The effect of the entry of Whitney Jefferson at this time could be significantly detrimental to this new bank and to another small bank with which Whitney Jefferson would directly compete. In view of the specific responsibilities placed upon the Board of Governors by section 3 of the Bank Holding Company Act, it is questionable whether the Board may properly disregard this possibility of destructive competition on the ground that, if such a danger exists, another supervisory authority may refuse to authorize Whitney Jefferson to establish the office in question.

One other aspect of the Whitney Holding Corporation plan must be taken into account in view of section 3(c) of the Act, which requires the Board to consider the effect of proposed transactions on the public interest. To enable minority stockholder interests to have a voice in the direction of national banks, section 5144 of the United States Revised Statutes, as amended by the Banking Act of 1933 (12 U. S. Code 61), provides for cumulative voting in the election of directors of national banks—that is, each shareholder has “the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit”.

In order to eliminate minority stockholders of Whitney National Bank of New Orleans and thereby to insure that Whitney Holding Corporation will be able to elect all members of the bank's board of directors, the plan before the Board includes a so-called “phantom bank” merger, which makes it impossible for a stockholder of the bank to retain his stock interest therein. The purpose of centralizing control of the holding company and its banks in the hands of very few individuals—perhaps only one individual—is apparent from other features of the proposal. Not only would the privilege of cumulative voting be denied to minority stockholders of Whitney Holding Corporation, but its Articles of Incorporation provide that its board may consist of as few as three directors. Furthermore, the Articles would permit a director, absent from a meeting, to authorize another director to “cast the vote of the absent director, according to written instructions, general

or special. . . ." The statutes of Louisiana permit the use of such directors' proxies. Absent such statutory authorization, which is unusual if not absolutely unique, the courts uniformly have held that directors' responsibilities may not lawfully be discharged by giving proxies in lieu of attending directors' meetings. The basic duty of directors is to direct the policies of the corporation. To perform this duty, directors should attend meetings, participate in discussion, and vote in accordance with convictions arrived at after full and free interchange of ideas.

In brief, the plan before the Board seems designed to minimize the participation of stockholders, and even of directors, in the control and management of the holding company and its subsidiary banks. This appears to be the common objective of (1) eliminating minority interests in subsidiary banks (where they would enjoy the cumulative voting privilege), (2) the absence of cumulative voting in the bank holding company, (3) the provision for a board of directors that may consist of only three members, and (4) the almost unprecedented provision for use of proxies at directors' meetings. Taken together, these features of the proposal reflect an arrangement by which power to direct and control the holding company system, including its banks, could be concentrated in the hands of a single individual. In my judgment, such an undemocratic arrangement is particularly inappropriate in a system that is to consist of national banks, when it is considered that none of the three latter features is permissible under the National Bank Act and related Federal statutes. It should not receive this Board's stamp of approval.

The proposal before the Board would promote banking convenience in the East Bank section of metropolitan New Orleans to a moderate degree. It would also, however, provide a vehicle for enhancing the existing high degree of banking concentration in the area and would permit a centralization of banking power of major proportions in individual hands, to a degree that, to my knowledge, is without parallel in the American banking system. For these reasons, I conclude that the creation of the proposed holding company system would be contrary to the public interest and therefore should be denied.

May 3, 1962

DEFENDANT'S EXHIBIT 6

WHITNEY NATIONAL BANK OF NEW ORLEANS

October 27, 1961

Keehn W. Berry
President

TO WHITNEY NATIONAL BANK SHAREHOLDERS:

REORGANIZATION PROGRAM

Under date of July 17, 1961, I explained to you that we had been working for some time to obtain the necessary approval of the Comptroller of the Currency and the Federal Reserve Board to the steps required to create a Holding Company into which the stock of the Whitney National Bank would be converted and that we then contemplated moving funds from the Whitney National Bank of New Orleans into the Holding Company for the establishment of a Whitney National Bank in Jefferson Parish.

We now have the concurrence of the Comptroller of the Currency to the establishment of a Crescent City National Bank with a capital of \$280,000 and a surplus of \$56,000 and paid in undivided profits of \$14,000, or a total capitalization of the Crescent City National Bank of \$350,000. The steps needed to consummate the change in our capital structure will be as follows:

1. We propose to put \$350,000 of the capital funds of the Whitney National Bank in a Louisiana business corporation under the title—"WHITNEY HOLDING CORPORATION". The Whitney Holding Corporation will have an authorized capital of 1,120,000 shares of no par value stock. 5,600 of these shares will be issued to the Whitney National Bank of New Orleans for the \$350,000. The Bank will immediately distribute these shares to all of its shareholders on the basis of 1/20th of one share for each share of the 112,000 shares of the Whitney National Bank stock outstanding.
2. The Whitney Holding Corporation will cause the organization of the Crescent City National Bank contributing \$280,000 to capital, \$56,000 to surplus, and \$14,000 to undivided profits, and Whitney Holding Cor-

poration will receive for that all of the authorized stock of Crescent City National Bank, being 112,000 shares of \$2.50 par value.

3. Crescent City National Bank will enter into a consolidation agreement with the Whitney National Bank of New Orleans. Whitney Holding Corporation will execute an agreement which will be a part of the consolidation agreement. The consolidation agreement will provide for consolidation under national banking law as follows:
 - a. All of the stock of the Crescent City National Bank will be retained by Whitney Holding Corporation except qualifying shares which will be sold to directors for cash.
 - b. Whitney National Bank shareholders will surrender all shares which will be cancelled and they will receive 9-19/20 shares of Whitney Holding Corporation for each share held. These shares, together with the dividend described in Section 1 above, will give each present Whitney shareholder ten shares of Whitney Holding Corporation stock for each share of Whitney Bank stock now held.
 - c. All assets and liabilities of Whitney National Bank of New Orleans will be consolidated into the Crescent City National Bank under the Charter of the Crescent City National Bank and under the name of the Whitney National Bank of New Orleans. The par value of the stock of Crescent City National Bank will be simultaneously increased to \$25.00 per share so that the capital structure of the new bank will be the same as that of the old.
 - d. Dissenting shareholders of the Whitney National Bank of New Orleans will be entitled to a cash payment of the appraised value of the shares as provided by Federal Bank Law. In accordance with the same law, shares of Whitney Holding Corporation representing dissenting shareholders will be sold at public auction and the proceeds returned to the capital funds of Crescent City National Bank to the extent of funds used to pay the dissenting shareholders.

4. Upon appropriate notice and publication, the consolidation agreement will be submitted for approval by the shareholders of Whitney National Bank of New Orleans and shall become effective only upon the affirmative vote of not less than 2/3rds of the outstanding stock.
5. Upon completion of the consolidation Whitney Holding Corporation will own all of the stock, except directors qualifying shares, of the Crescent City National Bank (to be named Whitney National Bank of New Orleans). The outstanding shares of Whitney Holding Corporation will be 1,120,000 shares owned by all of the present Whitney Bank stockholders proportionately, except for dissenting shareholders.
6. The Crescent City National Bank (to be named Whitney National Bank of New Orleans) will provide \$650,000.00 to Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish, receiving all stock therefor, being 20,000 shares having a \$25.00 par value. The initial capital structure will be \$500,000 capital, \$100,000 surplus, and \$50,000 undivided profits. Whitney Holding Corporation will immediately sell to directors qualifying shares for cash.
7. The Whitney Holding Corporation will register under and operate in accordance with the Bank Holding Company Act of 1956 and other applicable laws, under which it can acquire no additional banks without approval of the Board of Governors of the Federal Reserve. There are no present plans for additional acquisitions.

Insofar as the operation in New Orleans is concerned, this program is simply a corporate reorganization of the present Whitney National Bank of New Orleans. It contemplates no changes in personnel, management, or directorship. It contemplates no changes in the facilities of the bank in New Orleans. It contemplates no changes in the ownership or proportional shareholdings.

The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish to protect Whitney's competitive position in that area into which many of Whitney's present customers have moved.

This detailed outline of the main features of the consolida-

tion program is sent to you in accordance with the prescribed procedure in the regulations of the Comptroller of the Currency.

Sincerely,

K. W. BERRY

Filed June 21, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

BANK OF NEW ORLEANS & TRUST COMPANY, ET AL.,

versus

COMPTROLLER OF THE CURRENCY

AFFIDAVIT IN SUPPORT OF DEFENDANT

STATE OF LOUISIANA,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared: JAMES J. GILLY, who, being duly sworn, deposes and says:

(1) I am a resident of the City of New Orleans and President of the Whitney National Bank in Jefferson Parish. This affidavit is made to support any pleadings in opposition to the application of the plaintiff in this proceeding and particularly in opposition to a request for a preliminary injunction.

(2) Whitney National Bank in Jefferson Parish in good faith has completed all legal requirements of incorporation, is legally in existence, and has gone to substantial expense in preparing to open for business. Its directors and officers are qualified; its clerks and tellers have been designated and appointed; premises have been purchased for the location of the permanent bank and arrangements are being made for the improvement of the premises; temporary premises in the same location have been leased; forms, checks, books and stationery have been printed, as evidenced by exhibits attached hereto (marked Exhibit "A"); the public has been notified that it will open for business momentarily.

(3) The executive vice president, the remaining executive

officers except the President, and the entire staff of the Whitney National Bank in Jefferson Parish will be separate, apart, and distinct from the Whitney National Bank of New Orleans, and the Board of Directors of said bank is different and will operate as a separate, independent organization.

(4) Guaranty Bank & Trust Company of Lafayette serves a community separated from Jefferson Parish by the parishes (counties) of St. Charles, Lafourche, Assumption, and St. Mary, and in no way can be considered as serving the area that is served by Jefferson Parish.

(5) Testimony taken subject to cross-examination in the litigation of *Louis J. Roussel v. Whitney National Bank of New Orleans*, No. 394-584 of the Civil District Court for the Parish of Orleans, in which judgment was rendered on October 26, 1961, declaring Louis J. Roussel to be a competitor of the Whitney National Bank of New Orleans through his interest in the National American Bank in New Orleans, together with testimony by Louis J. Roussel before the Board of Governors of the Federal Reserve System in the matter of the application of Whitney Holding Corporation on January 17, 1962, affirmatively establish that Louis J. Roussel has a practical working control of the Merchants Trust and Savings Bank of Kenner, plaintiff herein, through the ownership of 40 per cent. of the outstanding capital stock of that bank and a practical working control of the National American Bank of New Orleans through the control of approximately 37 per cent. of the outstanding capital stock. (See statement of condition of Merchants Trust and Savings Bank of Kenner attached hereto and marked Exhibit "B".)

(6) National Bank of Commerce in New Orleans operates an affiliate in Jefferson Parish under substantially identical name of National Bank of Commerce in Jefferson Parish. (See statement of condition attached hereto and marked Exhibit "C".) The National Bank of Commerce is represented in extremely important proceedings by Messrs. A. J. Waechter and George Denegre, partners in the firm of Jones, Walker, Waechter, Poitevent, Carrere & Denegre. (See Motion to Dismiss in the case of *Orleans Parish School Board, et al, vs. Whitney National Bank of New Orleans, et al*, U.S.D.C. E.D.La., C.A. No 10,623, copy of which is attached hereto and marked Exhibit "D".) Messrs. George Denegre and A. J. Waechter are both direc-

tors of the Bank of New Orleans. (See statement of condition attached hereto and marked Exhibit "E." See also Martindale-Hubbell card, Exhibit "F".)

(7) The preliminary injunction requested herein restraining the Comptroller of the Currency from delivering a certificate to the Whitney National Bank in Jefferson Parish authorizing it to commence business will cause irreparable injury to said bank.

JAMES J. GILLY

Sworn to and subscribed before me, this 16 day of June, 1962.

BARTHOLOMEW P. SULLIVAN, JR.
Notary Public.

Lease of Commercial Property (Gross)

Parties

1 Willie J. Porrin (hereinafter called Lessor)
2 hereby leases to Leo Pollman & Co. Agents

Premises

3 (the obligations of all Lessees being in solidio) (hereinafter called Lessee), the following described premises:
4 the frame and masonry building known as No. 4407 Jefferson Highway between
5 Central Avenue and Lorman Street, Jefferson, La.

Term

12 This lease is for the term of twelve (12) months commencing
13 on the 15th day of June Nineteen Hundred and sixty-two
14 and ending on the 14th day of June Nineteen Hundred and sixty-three

Rent

16 This lease is made for and in consideration of a monthly cash rental of
17 One Hundred Thirty-five and 00/100 (\$135.00) dollars

Place of Payment

18 payable monthly in advance
19 The first payment shall be due on June 15th, 1962
20 Willie J. Porrin at 4411 Jefferson Highway The succeeding payments shall be due on the
21 first day of each and every succeeding month
22 Lessor may from time to time designate other places for the payment of the rent by written notice to
23 Lessee.

Use of Premises

24 The premises herein leased are to be used only for the following purposes:—
25 for commercial purposes

Condition and Maintenance

26 Lessee is obligated not to use the premises for any purpose that is unlawful or that tends to injure
27 or depreciate the property.
28 The within leased premises and appurtenances, including the locks, keys, plumbing, and glass,
29 elevator, and heating system, if any, and all other fixtures, are accepted by the Lessee in their present
30 condition, except for repairs and improvements as are written into this lease. The Lessee agrees
31 to keep them in the same order as received during the term of this lease and no repairs shall be due Lessee
32 except such as may be especially noted herein or needed to the roof or rendered necessary by fire or other
33 casualty, to pay all bills for water, including water sprinkler service charge, light, gas and other service, and
34 to comply at the Lessee's expense with all ordinances and laws, now existing or to be enacted, and at the ter-
35 mination or cancellation of this lease to return the premises broom clean and free from trash, and in like good
36 order as received by actual delivery of the keys to Lessor or Agent, the usual decay, wear and tear excepted.

Delayed Possession

37 If there are any elevators, lifts, machinery, glass or plate glass on premises, the care, maintenance
38 and repairs of same are assumed by Lessee, together with all liability or claims for damages, and
39 Lessee shall maintain liability insurance to the extent of _____ and
40 plate glass insurance as an additional safeguard.
41 If there are any switchtracks serving the leased property, the care, maintenance, repairs and fran-
42 chise charges, if any, are to be assumed by _____
43 Lessee assumes the maintenance of the plumbing, including fixtures, outlets and drains, and the
44 protection and repair of said plumbing, etc., even when injured by freeze.

Improvements

45 Should Lessee be unable to obtain possession on date of beginning of lease because of delays of
46 tenants, or if a building is to be constructed and workmen or contractors have not brought building
47 to condition permitting occupancy, or should there be any other delay in granting possession, not
48 caused by the personal fault and design of Lessor, this lease shall not be affected thereby, and Lessee
49 shall not be entitled to any damages beyond the remission of rent for such term during which he is
50 deprived of possession.

51 Should Lessor agree to make improvements to premises, Lessee agrees, if Lessor deems it impos-
52 sible or impracticable to make improvements agreed upon before possession is given, that Lessor may
53 begin the work on the improvements after Lessee is duly installed in the property, and there shall be
54 no reduction or waiver of any part of the rent because of this work.

55 Lessee is obligated not to make any additions or alterations whatever to the premises without
56 written permission. All additions, alterations or improvements made by Lessee with or without
57 consent of Lessor, no matter how attached (except movable trade fixtures), must remain the property
58 of Lessor, unless otherwise stipulated herein, Lessee, however, expressly waiving all right to compensa-
59 tion therefor. The Lessor, at his option, may require the building to be replaced in its original condi-
60 tion.

61 Lessor or Agent or workmen shall have the right to enter the premises at any time for the purpose
62 of making repairs necessary for the preservation of the property.

**Responsibility
for Damages**

63 Lessee assumes responsibility for the condition of the premises and Lessor will not be responsible
64 for damage caused by leaks in the roof, by bursting of pipes by freezing or otherwise, or by any vices
65 or defects of the leased property, or the consequences thereof, except in the case of positive neglect
66 or failure to take action toward the remedying of such defects within reasonable time after having
67 received written notice from Lessee of such defects and the damage caused thereby. Should Lessee
68 fail to promptly so notify Lessor, in writing of any such defects, Lessee will become responsible for
69 any damage resulting to Lessor or other parties.

**Signs or
Decorations**

70 Lessee is obligated not to display in, on, or above the leased premises any sign or decoration,
71 the nature of which, in the judgment of Lessor is dangerous, unsightly or detrimental to the property.
72 Lessee is prohibited from painting any signs on the leased property without the written consent of
73 Lessor, and Lessee is obligated to promptly remove at or before the expiration of this lease, any and
74 all signs painted or placed in or upon any part of the leased premises, to Lessor's satisfaction and Lessee is
75 obligated to pay the cost of said removal, plus agent's or attorney's fees, in event of failure to carry out
76 this obligation.

77 Lessor also reserves the right to keep posted on the premises signs "For Sale" or "By Auction"
78 at any time during the term of this lease and also cards "For Rent" during the 120 days preceeding
79 the expiration of this lease; and Lessee must allow parties authorized by Lessor or Agent to visit the
80 premises in view of buying during the term of this lease and in view of renting for 120 days prior to
81 expiration, from 10 A. M. to 5 P. M.

**Vacating
Premises**

82 In the event of the Lessee being absent from the premises, Lessor or his Agent shall be notified
83 in writing where keys may be had in order that the premises may be shown to prospective tenants or
84 purchasers. In case of the failure of the Lessee to comply with the foregoing conditions, or should
85 Lessee not permit the posting of signs or allow prospective tenants or purchasers to inspect the property,
86 as provided herein, Lessor has the option to consider this lease renewed for one year under the same
87 terms and conditions, or may hold Lessee responsible for damages, and Lessor or Agent has the further
88 option to enter the premises by any means, without responsibility to Lessee for any loss or damage re-
89 sulting therefrom.

90 Should the premises be vacated or abandoned by Lessee because of ejectment for breach hereof,
91 or otherwise, or should the Lessee begin to remove personal property or goods to the prejudice of the
92 Lessor's lien, then the rent for the unexpired term, with Attorney's fees, shall at once become due and
93 exigible, and Lessor, at his option, has the right to cancel the lease, or re-enter and let said premises
94 for such price and on such terms as may be immediately obtainable and apply the net amount realized
95 to the payment of the rent.

**Surrender
Of Premises**

96 At the expiration of this lease, or its termination for other causes, Lessee is obligated to immedi-
97 ately surrender possession, and should Lessee fail to do so, he consents to pay any and all damages,
98 but in no case less than five times the rent per day, with attorney's fees, costs, etc. Lessee also expressly
99 waives any notice to vacate at the expiration or termination of this lease and all legal delays, and hereby
100 confesses judgment with costs placing Lessor in possession to be executed at once. Should Lessor allow
101 or permit Lessee to remain in the leased premises after the expiration or termination of this lease, this
102 shall not be construed as a reconduction of this lease.

Insurance

103 Lessee is obligated to put nothing in the leased premises nor to do anything which would forfeit the in-
104 surance, and should any installation made or action taken by Lessee, whether authorized or unauthorized
105 under this lease, increase the rate of insurance on the building or contents as fixed by the Louisiana Fire
106 Prevention Bureau, or any similar institution, then Lessee is obligated to pay such increased rate of in-
107 surance on building and all contents. Should the Lessee's occupancy or business render the Lessor unable
108 to secure proper insurance, then Lessee hereby grants to Lessor the option of cancelling this lease, Lessee
109 waiving all delays, and agreeing to surrender possession at once, if notified by Lessor to do so. Lessee is
110 obligated to notify Lessor or Lessor's Agent, in writing, any time the leased premises will be unoccupied, so
111 that necessary vacancy permits may be obtained from Lessor's insurers, and failure to comply with this con-
112 dition will make Lessee liable for any loss or damage sustained by Lessor.

Sub-Lease

113 Lessee is not permitted to rent or sub-let or grant use or possession of the premises to any other
114 party without the written consent of the Lessor, and then only in accordance with the terms of this
115 lease. Should Lessee desire to sub-let, permission must be obtained in writing through Lessor or Agent
116 and such sub-lease shall be handled by Lessor's Agent at expense of the herein Lessee.

117 No auction sales, or any sales of furniture, fixtures, etc., shall be conducted on the premises without
118 the written consent of the Lessor or Agent.

**Non-Payment
Of Rent
Etc.**

119 Should the Lessee at any time violate any of the conditions of this lease, or discontinue the use of
120 premises for the purpose for which they are rented, or fail to pay the rent, water bill, or other expenses
121 assumed under this lease, punctually at maturity, as stipulated; or upon the adjudication of Lessee in
122 bankruptcy, the appointment of a receiver for Lessee, or the filing of a bankruptcy, receivership or
123 respite petition by the Lessee; or upon Lessee's suspension, failure or insolvency; and should such viola-

124 tion continue for a period of 10 days after written notice has been given Lessee, then,
125 at the option of the Lessor, the rent for the whole unexpired term of this lease shall at once become
126 due and exigible; and Lessor shall have the further option to at once demand the entire rent for the
127 whole term, or to immediately cancel this lease, or to proceed for past due installments only, reserving
128 its right to later proceed for the remaining installments, all without putting Lessee in default, Lessee
129 to remain responsible for all damages or losses suffered by Lessor, Lessee hereby assenting thereto and
130 expressly waiving the legal notices to vacate the premises. Should an Agent or Attorney be employed
131 to give special attention to the enforcement or protection of any claim of Lessor arising from this lease,
132 Lessee shall pay, as fees and compensation to such Agent or Attorney an additional sum of ten per
133 cent of the amount of such claim, the minimum fee, however, to be \$25.00, or if the claim be not
134 for money, then such sum as will constitute a reasonable fee, together with all costs, charges and
135 expenses.

136 Should Lessee at any time use the leased premises or any portion thereof for any illegal or unlawful
137 purpose, or commit, or permit or tolerate the commission therein of any act made punishable by fine or
138 imprisonment under the laws of the United States or the State of Louisiana, or any ordinance of the City
139 or Parish, the remedies set forth in the preceding paragraph shall be available to Lessor immediately with-
140 out necessity of giving any written notice or any other notice to Lessee.

141 Failure to strictly and promptly enforce these conditions shall not operate as a waiver of Lessor's
142 rights, Lessor expressly reserving the right to always enforce prompt payment of rent, or to cancel this
143 lease, regardless of any indulgences or extensions previously granted. The receiving by Lessor, or Lessor's
144 representative of any rent in arrears, or after notice or institution of any suit for possession, or for can-
145 cellation of this lease, will not be considered as a waiver of such notice of suit, or of any of the rights
146 of Lessor.

Fire Clause

147 If through no fault, neglect, or design of Lessee, the premises are destroyed by fire or other casu-
 148 alty or damaged to such an extent as to render them wholly unfit for occupancy, then this lease shall be
 149 cancelled. If, however, the premises can be repaired within 120 days from date of fire or casualty, then
 150 this lease shall not be cancelled, and Lessor shall notify Lessee within 30 days from date of fire or casu-
 151 alty that Lessor will repair the damage, and Lessee shall be entitled only to such a reduction or remission
 152 of rent as shall be just and proportionate.

153 Wherever there is conflict in this lease between the printed clauses and the specially written or
 154 typewritten clauses of this lease, the specially written or typewritten clauses shall apply.

155 All notices required to be given under the terms of this lease shall be in writing and by certified
 156 mail addressed to Lessee at the herein leased premises or to Lessor at the address appearing in this lease,
 157 and such mailing shall constitute full proof of and compliance with the requirement of notice, regard-
 158 less whether addressee receives such notice or not.

159 The parties to this lease understand and agree that the provisions herein shall, between them, have
 160 the effect of law, but in reference to matters not provided herein, this lease shall be governed by the or-
 161 dinances of the City of New Orleans, and the laws of the State of Louisiana.

162 Lessor, his heirs, successors, or assigns, agrees to pay Leo Fellman & Co.
 163 his heirs, successors or assigns a cash commission of 5% on the gross rental of this lease up to \$25,000.00
 164 and 4% on such amount above \$25,000.00 and a similar commission on any extension or renewal, if there be
 165 a privilege. Also a commission of 6% on the first \$100,000.00 4% on the excess on any agreement to sell or
 166 exchange made with or through Lessee.

167 In consideration of services rendered by Leo Fellman & Co.
 168 in negotiating this lease, Lessor hereby agrees that in the event the herein leased property is sold or
 169 transferred during the term of this lease, and there be any unpaid commissions still due

170 Leo Fellman & Co. for negotiating this lease, that Lessor will either pay same or have the pur-
 171 chaser assume same.

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 from the original bound volume

Surety

And now comes _____ WHO IS MADE A

PARTY to this contract of lease and is bound with Lessee IN SOLIDO for the faithful execution of all
 the obligations to be performed on the part of the Lessee, and furthermore waives all rights to a release
 from this obligation due to Lessor's failure to protest for non-payment of rent or due to granting of any
 extensions or indulgences to Lessee or any modifications of this lease, or due to the filing of a bankruptcy,
 receivership or respite petition by or against Lessee or discharge in bankruptcy of Lessee, or upon Lessee's
 suspension, failure or insolvency, or to the appointment of a receiver for Lessee by any competent court.

This lease is made and signed in triplicate, in the City of New Orleans

State of Louisiana, this 12th day of June, 1962

LEO FELLMAN & CO. is hereby
 authorized to sign this lease
 as my agent.

Lessee

WHITNEY NATIONAL BANK By: J. P. Harrison

Lessor

By: M. C. Mercurio
V.P. Harrison

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from the original bound volume

Lessor's
Affidavit

State of _____ }
County of _____ } ss.

On this _____ day of _____, 19____, before me, the undersigned
authority, personally came and appeared _____
resident of _____, who declared and acknowledged to me that he
executed the foregoing instrument and signed the same for the purpose and objects therein expressed, acting
in the capacity of _____, and by order of the Board of Directors,
of _____

IN TESTIMONY WHEREOF, I have set my hand and seal in the City of _____
State of _____
My commission expires _____

Notary Public.

Lessee's
Affidavit

State of _____ }
County of _____ } ss.

On this _____ day of _____, 19____, before me, the undersigned
authority, personally came and appeared _____
resident of _____, who declared and acknowledged to me that he
executed the foregoing instrument and signed the same for the purpose and objects therein expressed, acting
in the capacity of _____, and by order of the Board of Directors,
of _____

IN TESTIMONY WHEREOF, I have set my hand and seal in the City of _____
State of _____
My commission expires _____

Notary Public.

Assignment

For value received I/we hereby assign all my/our rights, title and interest in and to the within lease
unto _____, his heirs, successors or assigns, with full subrogation.

Lessor

Witnesses:

Standard Form
Real Estate Board of New Orleans, Inc.

LEASE OF
COMMERCIAL PROPERTY
(Gross)

From

To

Premises

Rent

Eviction

FOR EXCLUSIVE USE OF "REALTORS"

122

AGREEMENT
TO PURCHASE
OR SELL

For exclusive use of "Realtors"

JA F. Turnbull Realtor
1001 Jefferson Highway
P.O. Box 23-193 Harahan, La.

Phone 729-3111
Member Real Estate Board of New Orleans, Inc.

FORM ATP-OS NO. 2
Revised and approved Feb. 1959
Standard Form
Real Estate Board
of New Orleans, Inc.

James F. Turnbull Agent New Orleans, La. May 22, 1962

1. We offer and agree to purchase that portion of land located in Jefferson Parish, La., in Suburban Acres Subdivision, beginning at a distance of 355 feet from corner of Jefferson Highway & Central Ave., and measures 110.85 feet front on Jefferson Highway thence 153.27 feet South, thence 60 feet West thence 19.22 ft. South, thence 202 ft. to a pipe, thence on an angle 21 ft., to Central Ave., thence North on Central Ave., 127 feet thence westerly 54.42 ft. thence North a distance of 36.30 feet to (136.30) point of beginning, together with all buildings and improvements thereon as per plan of C F Rustie Inc. dated Jan. 6th. 1961, attached hereto and made part thereof, for the sum of EIGHTY FIVE THOUSAND AND no/100 \$85,000.00 on terms of all cash.

11. by a mortgage loan or loans at a rate of interest not to exceed 12% per annum, interest and principal payable on or before

12. years in equal (monthly) (quarterly) (semi-annual) (annual) installments.

13. Should purchaser, seller or agent be unable to obtain the loan stipulated above within 30 days from acceptance hereof,

14. this contract shall then become null and void and the agent is hereby authorized to return the purchaser's deposit in full. Commitment

15. by lender to make loan subject to approval of title shall constitute obtaining of loan.

16. Property sold subject to the following lease or leases:

17. It is also agreed and understood that this property is zoned C-2 Commercial

Vendor to give possession of residence #424 Central Ave., on or before August 1st. 1962.

20. All sewerage and street surfacing charges bearing against the property as of this date to be paid by Vendor

21. Real Estate Taxes and rentals (if any) to be prorated to date of act of sale.

22. All proper and necessary certificates and revenue stamps to be paid by seller. Cost of survey by Purchaser

23. Act of sale at expense of purchaser to be passed before Purchaser's Notary, on or prior to

24. July 1st. 1962, provided that if bona fide curative work in connection with title is required, the parties

25. herewith agree to and do extend the time for passing of act of sale by thirty days.

26. Upon acceptance of this offer, vendor and purchaser shall be bound by all its terms and conditions and purchaser becomes obligated

27. to deposit with seller's agent immediately 10% of the purchase price amounting to \$8,500

28. This deposit is to be non-interest bearing and may be placed in any bank in Metropolitan New Orleans, without responsibility

29. on the part of the agent in case of failure or suspension of such bank.

30. The seller shall deliver to purchaser a merchantable title, and his inability to deliver such title within the time stipulated herein

31. shall render this contract null and void, reserving unto purchaser the right to demand the return of the deposit from the holder thereof,

32. and reserving unto agent the right to recover commission.

33. In the event the seller fails to comply with this agreement within the time specified or for any other reason, the purchaser shall

34. have the right either to demand the return of his deposit plus an equal amount to be paid as penalty by the seller; or the purchaser may demand specific performance, at his option.

35. In the event the purchaser fails to comply with this agreement within the time specified, the seller shall have the right to

36. declare the deposit, ipso-facto, forfeited, without formality beyond tender of title to purchaser; or the seller may demand specific performance.

37. In the event the deposit is forfeited, the commission shall be paid out of this deposit, reserving to the seller the right to proceed against the purchaser for the recovery of the amount of the commission.

40. If this offer is accepted, seller agrees to pay the agent's commission of Six (6) per cent which

41. commission is earned by agent when this agreement is signed by both parties and when the mortgage loan, if any, has been secured.

42. Either party hereto who fails, for any reason whatsoever, to comply with the terms of this offer, if accepted, is obligated and

43. agrees to pay the agent's commission and all fees and costs incurred in enforcing collection and damages.

44. Commission to be divided equally between J. Morrison & James F. Turnbull.

45. This offer remains binding and irrevocable through May 23rd. 1962 noon.

46. Submitted to J. Morrison (Owner)

47. James F. Turnbull

48. Selling Agent

Jefferson Parish, La. La.
MAY 22 1962

I/We accept the above in all its terms and conditions.

(Signed) Mrs Catherine G. Wilson
Catherine G. Wilson
I have read the above and agree to the attached letter and incorporated by reference as if copied and attested to same Turnbull dated May 22, 1962

June 5, 1962

Mr. Kennedy Gilly,
c/o Milling, Seal, Saunders, Benson & Woodward
Whitney Building
New Orleans, Louisiana

Déar Mr. Gilly -

The Bank has been negotiating for the purchase of a piece of property on Jefferson Highway and Central Avenue in Jefferson Parish in connection with the operation of the Whitney National Bank in Jefferson Parish.

We enclose herewith the following -

Copy of Summary No. 658-Ordinance No. 4325 adopted November 12, 1959 by Jefferson Parish Council, zoning lots B X D E F and G as C-2 Commercial.

Copy of Summary No. 1322-Ordinance No. 4953 adopted March 9, 1961, approving plan of redivision of lots B X D E F and G Suburban Acres, by Jefferson Parish Council.

Original letter from Hermann & Hermann to Miss Catherine J. Nixon, dated August 19, 1957, re property 4403 Jefferson Hwy.

Copy of Act of Mortgage by Catherine J. Nixon, et al to First National Life Insurance Co., July 31, 1957.

Release of Mortgage before Frank S. Hermann, from Security Bldg. & Loan Assn., \$30,000.00 dated July 31, 1957,

and a plat of the property.

We would like for the title of the property to be examined and would appreciate your handling the transaction for us.

Cordially yours,

John C. Shea,
Vice President

JCS:jes
encls.

RECEIPT IS HEREBY-ACKNOWLEDGED OF THE ABOVE WITHIN DESCRIBED

K/S DATE 6/5/62

124

IN JEFFERSON PARISH
JEFFERSON PARISH, LA.

Please destroy any remaining checks of this temporary supply to prevent unauthorized use

We welcome you as a depositor of our bank and will constantly strive to make our relationship pleasant and mutually satisfactory. Our officers and staff will gladly assist you in your banking requirements and we invite you to make full use of our facilities.

JAMES GILLY, JR., President

[illegible]

_____ 19__ No. _____

WHITNEY NATIONAL BANK ⁸⁴⁻⁵¹⁷/₆₅₀
IN JEFFERSON PARISH
JEFFERSON PARISH, LA.

PAY TO THE ORDER OF _____ \$ _____

DOLLARS

9. _____

CENTS

125

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WHITNEY NATIONAL BANK 84-517
650

IN JEFFERSON PARISH
JEFFERSON PARISH, LA.

CUSTOMERS DRAFT

Pay to the order of

VALUE RECEIVED AND CHARGE TO ACCOUNT OF

WITH EXCHANGE

To

\$

19

Dollars

ORIGINAL

WHITNEY NATIONAL BANK

IN JEFFERSON PARISH
JEFFERSON PARISH, LA.

NUMBER

Pay to the order of

\$

Dollars

AUTHORIZED SIGNATURE

ORIGINAL

WHITNEY NATIONAL BANK

IN JEFFERSON PARISH
JEFFERSON PARISH, LA.

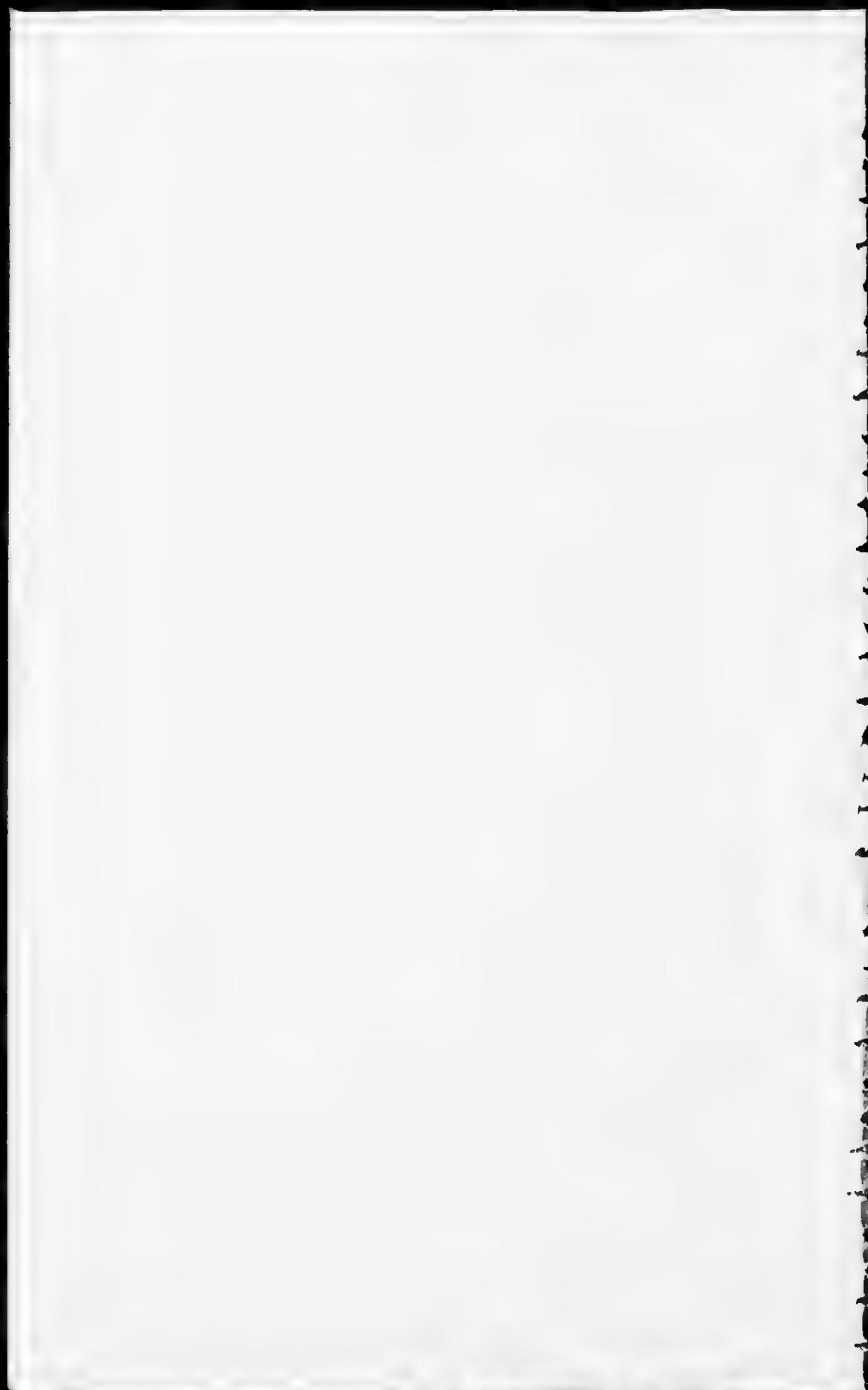
NUMBER

Pay to the order of

\$

Dollars

AUTHORIZED SIGNATURE



128

WHITNEY NATIONAL BANK

IN JEFFERSON PARISH

JEFFERSON PARISH, LA.

JAMES GILLY, JR.

PRESIDENT

BALANCE FORWARD

DOLLARS

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
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BALANCE CARRIED FORWARD		

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

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WHITNEY NATIONAL BANK ⁸⁴⁻⁵¹⁷/₆₅₀
IN JEFFERSON PARISH
JEFFERSON PARISH, LA.

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_____ DOLLARS

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_____ DOLLARS

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

No. _____
DATE _____ 19____
To _____
FOR _____

	DOLLARS	CENTS
BALANCE BROUGHT FORWARD		
AMOUNT DEPOSITED		
TOTAL		
AMOUNT THIS CHECK		
BALANCE CARRIED FORWARD		

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_____ DOLLARS

_____ 19____ No. _____
WHITNEY NATIONAL BANK ⁸⁴⁻⁵¹⁷/₆₅₀
IN JEFFERSON PARISH
JEFFERSON PARISH, LA.

PAY TO THE ORDER OF _____ \$ _____
_____ DOLLARS

STATEMENT OF CONDITION

as of

DECEMBER 31, 1961

OFFICERS

EDWARD C. BOYER, President and Cashier

SAM A. WOOL, Executive Vice-President

WILLIAM E. MILLER, JR., Assistant Cashier

PAUL D. PAGE, Assistant Cashier

ARCHIE R. USHER, Assistant Cashier

★ ★

DIRECTORS

EDWARD C. BOYER

FRANK C. DUPEPE •

WM. R. MANCUSO

HENRY RAZIANO

LOUIS J. ROUSSEL

EDWARD J. STOULIG

SAM A. WOOL



MERCHANTS TRUST & SAVINGS BANK

"Your Neighborhood Bank"

KENNER, LOUISIANA • POST OFFICE BOX 458

Member, Federal Deposit
Insurance Corporation

Member, Federal
Reserve System

MERCHANTS TRUST & SAVINGS BANK

STATEMENT OF CONDITION

at the close of business

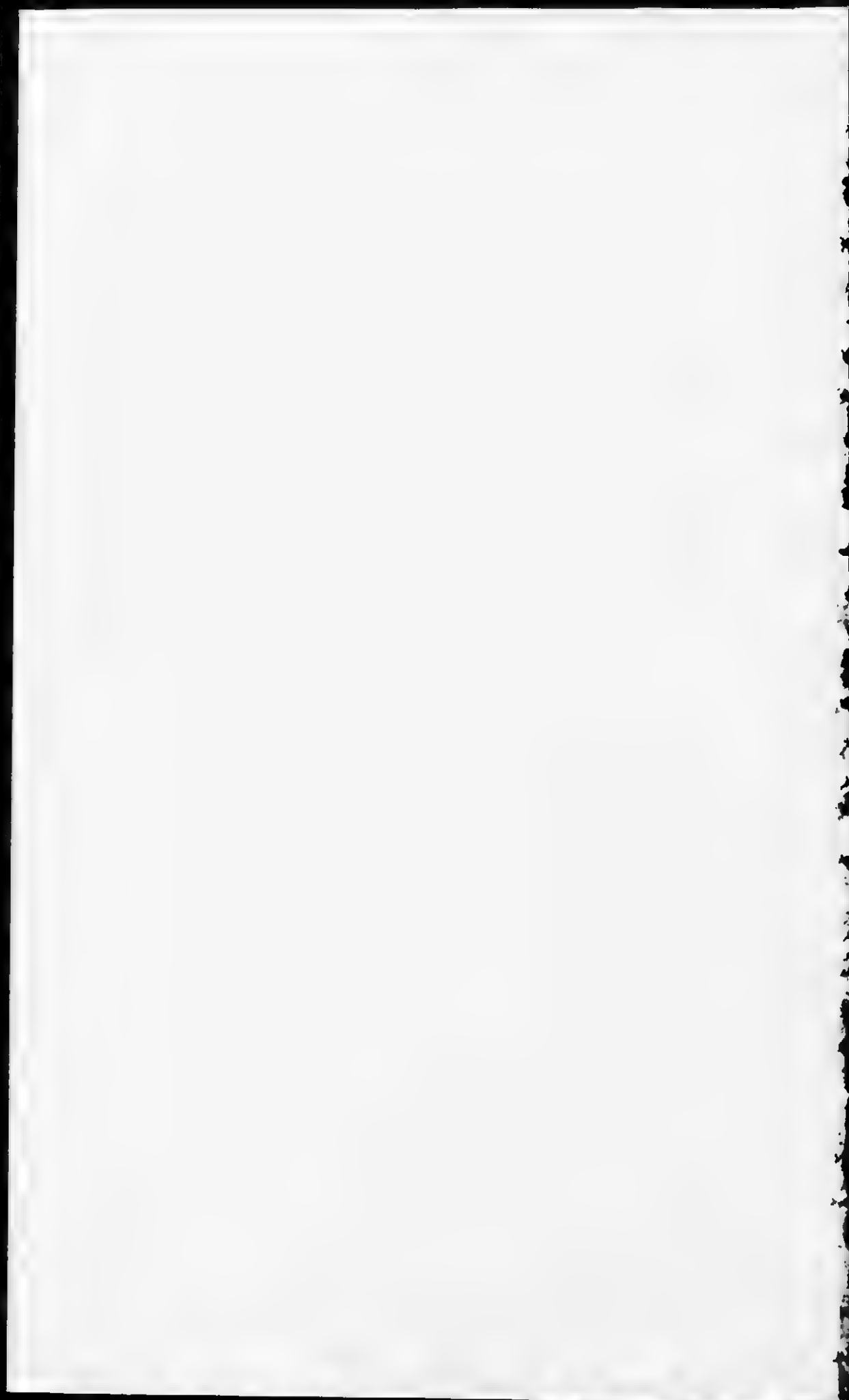
DECEMBER 31, 1961

RESOURCES

[illegible]

LIABILITIES

[illegible]



WILLIAM HARRY TALBOT
Attorney at Law and Notary Public
808 Whitney Building
New Orleans 12

Magnolia 5145

July 12, 1961

Mr. Keehn W. Berry, President,
Whitney National Bank of New Orleans,
New Orleans, Louisiana.

Dear Mr. Berry:

On April 27, 1961 I sold to Louis J. Roussel for the account of the Succession of J. P. Morgan, Edward C. Morgan and Patricia Morgan, 5,661 shares of the capital stock of Merchants Trust and Savings Bank, Kenner, Louisiana, for \$261,475.38 cash. I received Cashier's checks on the National American Bank of New Orleans amounting to this sum, in full payment therefor.

According to the list of stockholders which I had, at that time there were 12,500 shares of stock outstanding.

Very truly yours,

WM. H. TALBOT

wht/me

WALL STREET JOURNAL

June 14, 1961

Holder Starts Proxy Battle for Control of Whitney
National Bank in New Orleans

By a WALL STREET JOURNAL Staff Reporter

NEW ORLEANS—A stockholder, dissatisfied with the dividend policy of Whitney National Bank, has started a proxy fight for control of the bank, Louisiana's largest and one of the biggest in the South.

The dissident stockholder is Louis J. Roussel, who said he holds 3,000 to 5,000 shares of the bank's 112,000 shares outstanding. Mr. Roussel said he is a former street car conductor and oil field worker who now is an oil producer and real estate man. He claimed to be Whitney's third largest

stockholder. The only larger holders, Mr. Roussel said, are a Pittsburgh woman and the pension fund of the U. S. Steel Corp.

Last April Whitney National listed total assets of nearly \$476 million. New Orleans' next largest bank, the National Bank of Commerce, has assets of \$257 million.

In a letter mailed to the bank's shareholders, Mr. Roussel said his main complaint is dividends, currently paid at an annual rate of \$4 a share. "They started that rate in 1949, when earnings were \$14.25 a share; last year earnings were \$30.87, and they still paid \$4," Mr. Roussel said.

If his fight for control succeeds, Mr. Roussel said, he will call for a 10-for-1 stock split and a dividend increase to an annual rate of \$20. He said he would ask that Keehn W. Berry be replaced as president, but did not disclose who he would propose for the job.

Mr. Roussel also said he would demand an audit to determine what the "hidden assets" of the bank are and insist on following what he claimed is "the advice of the national bank examiners and sell all of the hidden assets the bank now owns." Proceeds of the sale, he said, would be divided among shareholders. Mr. Roussel said such hidden assets consist of land holdings, among other things.

"There are enough small stockholders to gain working control of the bank, with the help of cumulative voting, Mr. Roussel stated. Under cumulative voting, a stockholder can multiply his shares by the number of directors posts up for a vote, and concentrate or distribute these votes as he wishes. Mr. Roussel said he hopes to name at least six of the 17 members of the board at the annual meeting next January 9.

Bank officials have made little comment on Mr. Roussel's efforts, except to acknowledge they are aware of them. As to Mr. Roussel's chances, board member Morgan Whitney says, "Anybody's guess is as good as mine."

A broker who handles Whitney stock in over-the-counter trading says, "You can bet they're worried. Both sides are buying all the stock they can get. Three weeks ago you could buy Whitney for \$400 a share; now it's \$480 bid, and there's none offered."

Mr. Roussel said he decided to make a move for control of Whitney after a disagreement over interest rates on a \$1.5 million loan the bank made him. "They told me if I didn't like it I could borrow my money at another bank."

So, he said, he sent a check to pay off the loan on a Friday afternoon, but was told he'd have to keep paying interest until Monday, a matter of \$800. "I told them that wasn't even legal and I was starting a fight for control right then," he continued.

"I'm willing to invest up to \$10 million buying shares and soliciting proxies," Mr. Roussel said. Two years ago he waged a similar campaign against another New Orleans bank, the National American Bank, and was successful.

In that campaign, he said, directors decided to work with him after his proxy fight intentions were announced. He said he owned personally 15% of National American and represented about 40% of the stock. Mr. Roussel stated that his group won seven seats on the board, including one currently held by himself, and won the support of eight additional directors on the 25-man board.

Filed June 21, 1962

EXHIBIT C

139

OFFICERS

VIC J. PASSERA *President*
F. M. LEGUENEC, JR. *Vice President and Cashier*
LOUIS H. CLAY *Vice President*
HOWARD S. COX *Vice President*
JOSEPH S. DELANEY *Vice President*
VICTOR J. KURZWEG, JR. *Mgr. Metairie Office*
SHELLEY SCHUSTER *Vice President*
CLEBERT C. SMITH *Vice President*
FRANK A. GRECO *Vice President*
NUMA J. BARROIS *Assistant Vice President*
EDWARD SMIRA *Assistant Cashier & Manager*
DAVID J. VOGLER *Veterans Highway Office*
DANIEL B. RYAN *Assistant Cashier*
CLEVELAND GONZALES *Assistant Cashier & Manager*
Consumer Credit Dept.
Manager Discount Dept.

ADVISORY COMMITTEE

HAROLD BUCHLER *Attorney*
SIDNEY W. CAMPBELL *President,*
S. W. Campbell & Son, Inc.
SAM CARO *President,*
Southern Tailoring Co., Inc.
JOSEPH LUCAS *President,*
Medical Arts Pharmacy, Inc.
THURSTON B. MARTIN *President,*
First National Life Ins. Co.
GEORGE J. PECORARO *Business Consultant*
ROSS WILLS *Vice President,*
C. W. Vollmer and Co., Inc.
HAROLD E. WISE *President,*
Harold's Cafeteria
McDONALD, BUCHLER & CARR, Attorneys

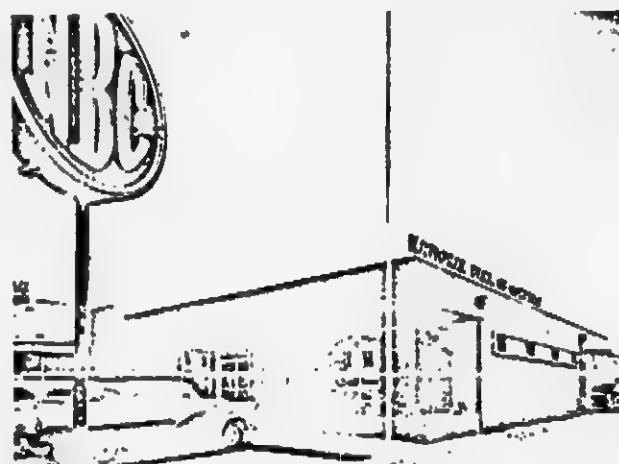
SERVICES

COMMERCIAL ACCOUNTS
PERSONAL ACCOUNTS
SAVINGS DEPARTMENT
COMMERCIAL LOANS
PERSONAL LOANS
AUTOMOBILE LOANS
REAL ESTATE MORTGAGE LOANS
HOME IMPROVEMENT LOANS
TRAVELERS CHEQUES
GUARANTEED CHECKS
SAFE DEPOSIT VAULTS
CHRISTMAS CLUB

HEAD OFFICE—2400 Jefferson Highway
METAIRIE OFFICE—2030 Metairie Road
HARAHAN OFFICE—6318 Jefferson Hwy.
Veterans Hwy. Office—5300 Veterans Hwy.



HEAD OFFICE
Jefferson Highway at Labarre Road



METAIRIE OFFICE
2030 Metairie Road



HARAHAN OFFICE
Jefferson Highway at Oak Avenue

THE NATIONAL
BANK OF COMMERCE
IN JEFFERSON PARISH



STATEMENT OF CONDITION

DECEMBER 31, 1960

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THE NATIONAL BANK OF COMMERCE

IN JEFFERSON PARISH (LOUISIANA)

140

DIRECTORS

WILLIAM E. CASSIDY
*Asst. Div. Sales Manager
Texaco, Inc.*

LOUIS H. CLAY
*Board Chairman,
Southern Ford Tractor Corporation*

HOWARD S. COX
Vice President

GEORGE S. FARNSWORTH
*President,
R. P. Farnsworth & Co., Inc.*

S. J. GONZALES, JR.
*President,
Southern School Equipment Co., Inc.*

WILLIAM T. HESS
*Vice-President & Chief Engineer,
Louisiana Power & Light Co.*

DR. VIRGIL T. JACKSON, JR.
Dentist

ARTHUR L. JUNG, JR.
*Secretary,
Crescent Bed Co., Inc.*

VICTOR J. KURZWEG, JR.
*President,
Consolidated Companies, Inc.*

F. M. LEGUENEC, JR.
Vice President and Cashier

C. C. McKIRAHAN
Retired

JOHN A. MILLER
*President,
Brown-Miller Company*

R. A. MITCHELL
*President,
Louisiana Transit Co., Inc.*

ROBERT M. MONSTED
*President,
Jefferson Cold Storage, Inc.*

DR. ALTON OCHSNER
Physician and Surgeon

JOHN OULLIBER
*President,
The National Bank of Commerce
in New Orleans*

HENRY F. OWSLEY, JR.
*Partner,
Owsley Insurance Agency*

VIC J. PASSERA
President

SHELLEY SCHUSTER
*Executive Representative,
Robert Gair Paper Products Group,
Continental Can Co., Inc.*

CLEBERT C. SMITH
*Executive Vice President
Correspondent Banking-Credits
The National Bank of Commerce
in New Orleans*

STATEMENT OF CONDITION

DECEMBER 31, 1960

RESOURCES

Cash on Hand and Due from Banks	\$ 2,974,685.30
U. S. Government Securities	8,546,178.98
Obligations of U. S. Government Instrumentalities	735,542.70
Stock in Federal Reserve Bank	30,000.00
Municipal Securities	1,565,704.20
Loans and Discounts	5,342,035.63
Bank Buildings and Leasehold Improvements	437,263.98
Furniture and Fixtures	165,140.35
Accrued Interest and Other Assets	115,283.08
TOTAL RESOURCES	\$19,911,834.22

LIABILITIES

Deposits	\$18,124,411.21
Discount Collected but not Earned	69,486.40
Reserve for Taxes, Interest and Expenses	421,578.62
TOTAL LIABILITIES	18,615,476.23
Capital Stock (60,000 Shares, \$10.00 Par)	600,000.00
Surplus	400,000.00
Undivided Profits	296,357.99
Total Capital Funds	\$ 1,296,357.99
TOTAL	\$19,911,834.22

Member Federal Deposit Insurance Corporation

This Bank is a Legal Affiliate of
The National Bank of Commerce in New Orleans

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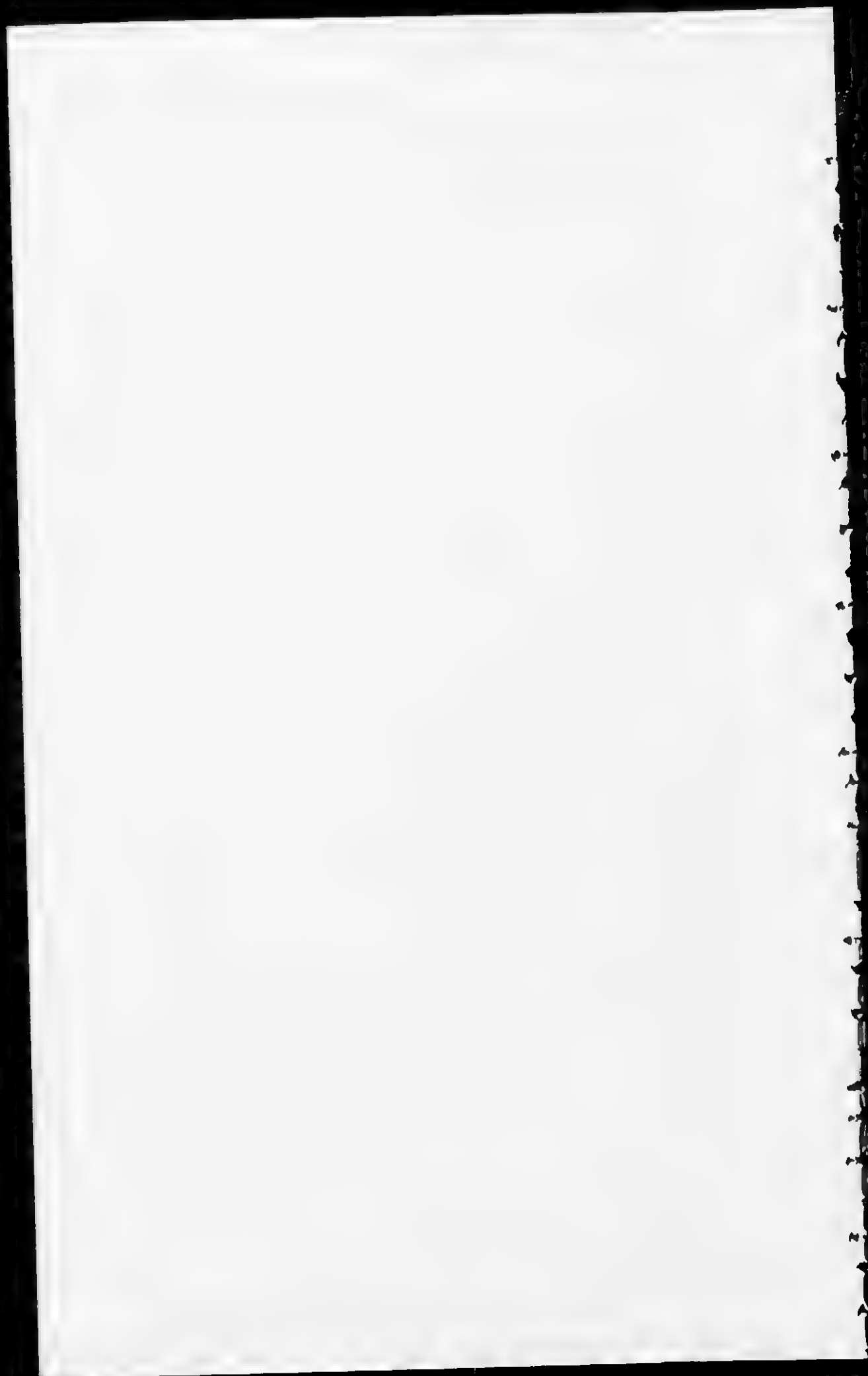


EXHIBIT D

Filed June 21, 1962

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF
LOUISIANA, NEW ORLEANS DIVISION

Civil Action No. 10,623

ORLEANS PARISH SCHOOL BOARD, ET ALS

vs.

WHITNEY NATIONAL BANK, ET ALS

MOTION TO DISMISS

The National Bank of Commerce in New Orleans, through undersigned counsel, moves the Court to dismiss the complaint herein on the following grounds:

I

That the Court is without jurisdiction for the reason that both the plaintiff and mover are citizens of the same State and the complaint discloses no other grounds upon which the jurisdiction of this Court may be invoked.

II

Alternatively, mover avers that it is, and always has been, desirous of disbursing the funds on deposit with it and which are the subject of this proceeding, on the order of the persons rightfully entitled thereto. However, as will appear from the complaint herein, the ownership of said funds is in dispute, others not parties to this suit claiming title thereto, so that no orders or decrees should be rendered herein unless and until the dispute has been resolved and the ownership of the funds has been determined.

WHEREFORE, mover respectfully prays that the complaint filed herein be dismissed. And for all general and equitable relief.

A. J. WAECHTER, JR. & GEORGE DENEGRE OF
JONES, WALKER, WAECHTER, POITEVENT, CAR-
RERE & DENEGRE, *Attorneys for Movant.*
1547 National Bank of Commerce Bldg.,
New Orleans, 12, Louisiana.

Clerk's Office, a true copy, June 16, 1962.

MURIEL H. JONES, Deputy Clerk, U.S. District Court,
Eastern District of Louisiana, New Orleans, La.

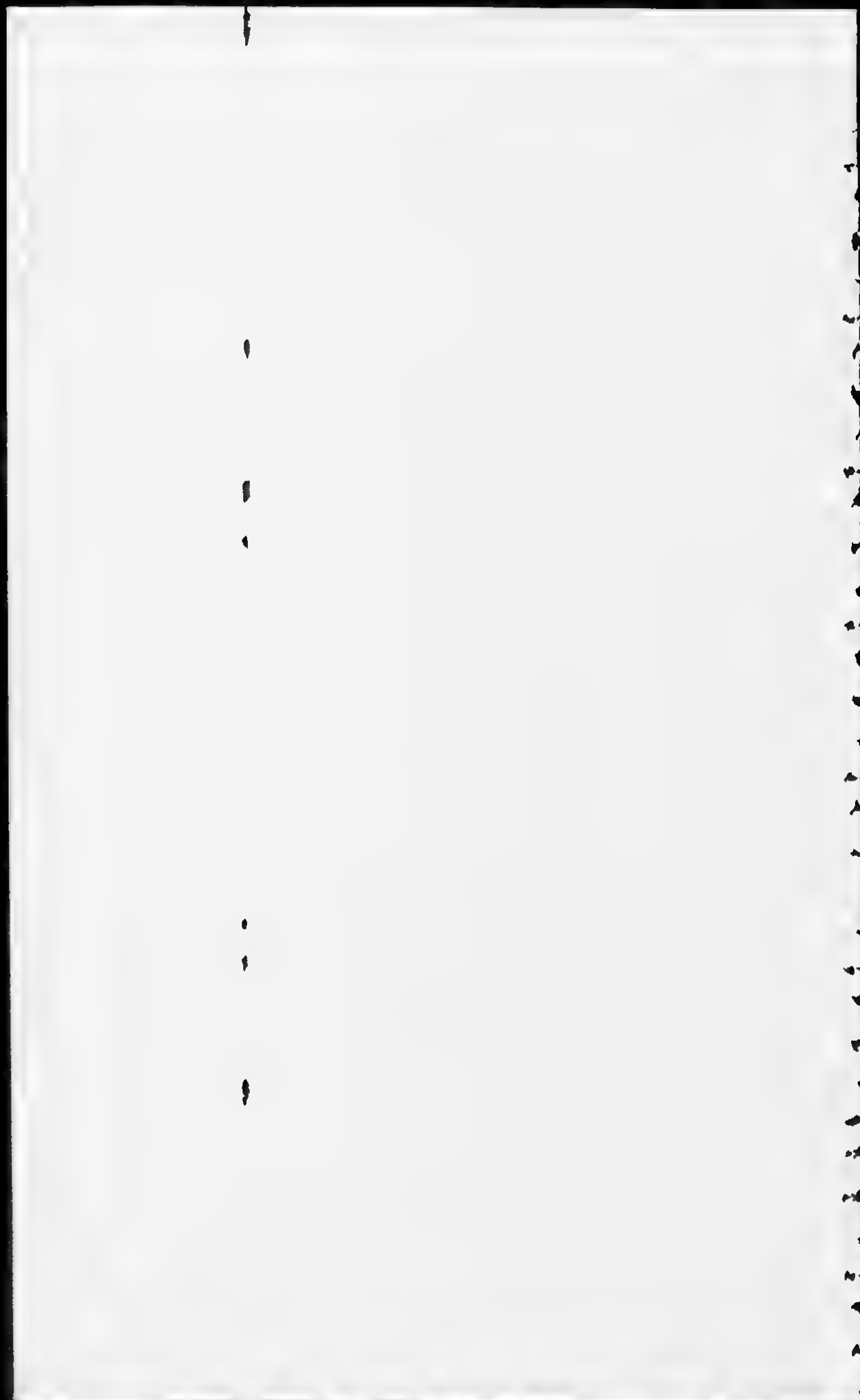
CERTIFICATE

I hereby certify that a copy of the above and foregoing motion has been served on opposing counsel by placing a copy of same in the United States Mail, postage prepaid, on this 5th day of December, 1960.

(Sgd.) A. J. WAECHTER, JR.

Clerk's Office, a true copy, June 16, 1962.

MURIEL H. JONES, Deputy Clerk, U.S. District Court,
Eastern District of Louisiana, New Orleans, La.



DIRECTORS

Filed June 21, 1962

EXHIBIT E

LEON E. BER
EDWARD L. CHAPOTEL
Vice-President, Kots & Bosthoff, Inc.

→ ✓ GEORGE DENÈGRE
Attorney

LAURANCE EUSTIS, JR.
Eustis & Godchaux

RALPH H. FISHMAN
Attorney

RUFUS W. FONTENOT

OLIN LINN
President, New Orleans Motor Co., Inc.

MORGAN W. McCALL
*Executive Vice-President
Louisiana Industries, Inc.*

→ ✓ LAWRENCE A. MERRIGAN
President

deLESSEPS S. MORRISON
Mayor, City of New Orleans

RICHARD M. NASH

ROBERT J. PATERSON
R. J. Paterson Insurance Agency

AUGUST PEREZ, JR.
August Perez & Associates, Architects

HAROLD T. SHALETT
Berkshire Oil Co.

FISHER E. SIMMONS, JR., C.L.U.
*General Agent,
Pan-American Life Insurance Co.*

JOSEPH B. STOREY
Vice-President, Southdown, Inc.

→ ✓ A. J. WAECHTER, JR.
Attorney

LOUIS H. YARRUT

CHARLES C. ZATARAIN
Chas. C. Zatarain & Son, Brokers

OFFICERS—MAIN OFFICE

LAWRENCE A. MERRIGAN
President

JACQUES A. LIVAUDAIS
Executive Vice-President

OLIN LINN
Vice-President

RICHARD M. NASH
Vice-President

RALPH M. FRANCE
Vice-President

JOHN E. PREVOST
Assistant Vice-President & Cashier

STEPHEN J. LOUP, JR.
Assistant Vice-President & Comptroller

LOUIS V. CARAMBAT
Assistant Vice-President

DONALD C. HANEY
Assistant Vice-President

VINCENT J. PEREZ, III
Auditor

THOMAS A. DAVENPORT
Assistant Cashier

KATHERINE EBRENZ
Assistant Cashier

ARTHUR J. PARHAM
Assistant Cashier

BEAUREGARD A. REDMOND
Assistant Cashier

ROBERT S. REHM
Assistant Cashier

H. KEITH SEYMOUR
Assistant Cashier

HENRY F. THOMPSON
Assistant Cashier

AUGUST J. TRAMONTE
Assistant Cashier

MARCUS TULLY II
Assistant Cashier

ANITA MAYER
Vault Custodian

MRS. MARGARET JOHNSON
Manager, School Savings Department

BERTHE ARTIGUES
Administrative Secretary to the Board

143

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EXHIBIT F

"Martindale-Hubbell Law Directory
Ninety-Fourth Year - 1962 - Volume II"

2466

LOUISIANA

JONES, WALKER, WAECHTER, POITEVENT, CARRÈRE & DENÈGRE

General Civil and Admiralty Practice in the State and Federal Courts

1547 NATIONAL BANK OF COMMERCE BUILDING
NEW ORLEANS 12, LOUISIANA

Telephone
523-6641
LD. 444
Cable Address
"JOWA"

MEMBERS OF FIRM

Joseph Merrick Jones, born New Orleans, Louisiana, August 30, 1903; admitted to bar, 1925, Louisiana. Preparatory education, The Hill School and Tulane University of Louisiana (A.B., 1925); legal education, Tulane University of Louisiana (LL.B., 1925). *Fraternities*: Phi Delta Phi; Order of Coif. President, Board of Administrators, Tulane University Educational Fund, 1950—. *Member*: New Orleans (President, 1955), Louisiana State (Member, Board of Governors, 1953-54) and American Bar Associations; International Association of Insurance Counsel.

Arthur J. Waechter, Jr., born New Orleans, Louisiana, November 20, 1913; admitted to bar, 1936, Louisiana. Preparatory education, Tulane University, New Orleans, La. (B.A., 1934); legal education, Tulane (LL.B., 1936). *Fraternities*: Phi Delta Phi; Order of Coif. Professor of Law, Tulane University, 1947—. *Member*: New Orleans, Louisiana State and American Bar Associations; International Association of Insurance Counsel; Maritime Law Association of the United States.

J. Mort Walker, Jr., born New Orleans, Louisiana, February 10, 1904; admitted to bar, 1936, Louisiana. Preparatory education, Tulane University (B.E., 1925); legal education, Loyola University of the South (LL.B., 1936). *Member* of The Council, Louisiana State Law Institute, 1938-44. Professor of Law, Loyola University of the South, 1936-44. *Member*: New Orleans, Louisiana State (Member, Board of Governors, 1942-43, 1944-45) and American Bar Associations.

Louis J. Darrah, born Hattiesburg, Mississippi, July 17, 1906; admitted to bar, 1932, Louisiana. Preparatory education, University of Mississippi and Loyola University of the South; legal education, Loyola University of the South (LL.B., 1932). *Fraternity*: Delta Theta Phi. *Member*: New Orleans, Louisiana State and American Bar Associations.

Edward B. Poitevent, born New Orleans, Louisiana, June 15, 1913; admitted to bar, 1937, Louisiana. Preparatory education, Tulane University (B.A., 1935); legal education, Tulane University (LL.B., 1937). *Member*: New Orleans, Louisiana State and American Bar Associations.

Ernest A. Carrère, Jr., born New Orleans, Louisiana, September 26, 1915; admitted to bar, 1938, Louisiana. Preparatory education, Tulane University; legal education, Tulane University (LL.B., 1938). *Fraternities*: Phi Delta Phi; Omicron Delta Kappa. *Member*: New Orleans, Louisiana State and American Bar Associations; Maritime

Law Association of the United States; International Association of Insurance Counsel.

George Denègre, born New Orleans, Louisiana, October 10, 1923; admitted to bar, 1944, Louisiana. Preparatory education, Yale University (B.A., 1943); legal education, Tulane University (LL.B., 1948). *Fraternities*: Phi Delta Phi; Order of Coif. *Member*: New Orleans, Louisiana State and American Bar Associations; Maritime Law Association of the United States.

Michael J. Molony, Jr., born New Orleans, Louisiana, September 2, 1922; admitted to bar, 1951, Louisiana. Preparatory education, Tulane University; legal education, Tulane University (LL.B., 1950). *Fraternity*: Phi Delta Phi. Assistant Secretary and Ex-Officio Member of Louisiana State Law Institute, 1958—. Institute of Labor Law, Tulane University, University of Louisiana, 1953-59. *Member*: New Orleans, Louisiana State (Secretary, 1957-58; 1958-59; Member, Board of Governors, 1959-60) and American Bar Associations.

John V. Baus, born New Orleans, Louisiana, December 29, 1927; admitted to bar, 1951, Louisiana. Preparatory education, Louisiana State University and Tulane University (B.S., 1947); legal education, Tulane University (LL.B., 1951). *Fraternity*: Phi Delta Phi. *Member*: New Orleans, Louisiana State and American Bar Associations; Maritime Law Association of the United States; International Association of Insurance Counsel.

James M. Burlingame, born Great Falls, Montana, December 25, 1926; admitted to bar, 1944, Louisiana. Preparatory education, Tulane University (B.A., 1949); legal education, Tulane University (LL.B., 1950). *Fraternity*: Phi Delta Phi. *Member*: New Orleans, Louisiana State and American Bar Associations.

Robert B. Acomb, Jr., born New Orleans, Louisiana, July 28, 1930; admitted to bar, 1953, Louisiana. Preparatory education, Tulane University (B.A., 1951); legal education, Tulane University (LL.B., 1953). *Fraternities*: Phi Delta Phi; Omicron Delta Kappa. *Member*: New Orleans, Louisiana State and American Bar Associations; Maritime Law Association of the United States.

Lucius F. Suthon, born New Orleans, Louisiana, July 24, 1928; admitted to bar, 1952, Louisiana. Preparatory education, Tulane University of Louisiana (B.A., 1950); legal education, University of Virginia (LL.B., 1952). *Member*: New Orleans, Louisiana State and American Bar Associations.

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U. A. 1857-62

(This card contains)

J.S. WALKER, WAECHTER, POITEVENT, CARRÈRE & DENÈGRE (Continued)

Rosen, II, born New Orleans, Louisiana, February 27, 1925; admitted to bar, 1951, Louisiana. Preparatory education, Isidore Newman School, New Orleans, La. and Tulane University (A.B., 1947); legal education, Tulane University (LL.B., 1950). *Fraternity*: Phi Delta Phi. *Member*: New Orleans, Louisiana State and American Bar Associations.

L. Upton, born New Orleans, Louisiana, April 16, 1913; admitted to bar, 1950, Louisiana. Preparatory education, Tulane University of Louisiana; legal education, Tulane University of Louisiana (LL.B., 1950). *Fraternity*: Phi Delta Phi. *Member*: New Orleans and Louisiana State Bar Associations.

W. Browne, Jr., born New Orleans, Louisiana, April 14, 1933; admitted to bar, 1956, Louisiana. Preparatory education, Tulane University of Louisiana (B.A., 1954); legal education, Tulane University of Louisiana (LL.B., 1956). *Fraternities*: Phi Delta Phi; Omicron Delta Kappa. *Member*: New Orleans, Jefferson County, Louisiana and American Bar Associations.

Bernstein, born New Orleans, Louisiana, May 12, 1930; admitted to bar, 1957, Louisiana. Preparatory education, University of Alabama (B.S., 1952); legal education, Tulane University (LL.B., 1957). *Fraternity*: Phi Delta Phi. *Member*: Student Board of Editors, Tulane Law Review, 1954-1956. *Member*: New Orleans, Louisiana State and American Bar Associations.

N. Sims, born New Orleans, Louisiana, December 2, 1924; admitted to bar, 1951, Louisiana. Preparatory education, Tulane University (B.S., 1946); legal education, Tulane University (LL.B., 1950). *Fraternity*: Phi Alpha Delta. *Member*: New Orleans, Louisiana State and American Bar Associations.

OF COUNSEL

Samuel Rosen (1872-1957)

May (1876-1961)

ASSOCIATES

J. Schulze, born New Orleans, Louisiana, February 3, 1916; admitted to bar, 1938, Louisiana. Preparatory education, Tulane University (B.S., 1936); legal education, Tulane University (LL.B., 1938). *Fraternity*: Phi Delta Phi. *Member*: New Orleans and Louisiana State Bar Associations.

E. Hall, Jr., born New Orleans, Louisiana, November 14, 1926; admitted to bar, 1952, Louisiana. Preparatory education, Tulane University of Louisiana (B.B.A., 1950); legal education, Tulane University of Louisiana (LL.B., 1952). *Fraternity*: Phi Delta Phi. *City Attorney's Office*, New Orleans, 1954-1956. *Member*: New Orleans, Louisiana State and American Bar Associations.

W. Lane, III, born Shreveport, Louisiana, November 11, 1932; admitted to bar, 1958, Louisiana. Preparatory education, Tulane University (B.B.A., 1954); legal education, Tulane University (LL.B., 1958). *Fraternity*: Phi Delta Phi. *Member*: New Orleans, Louisiana State and American Bar Associations.

Preparatory education, Tulane University (B.B.A., 1954); legal education, Tulane University (LL.B., 1959). *Fraternity*: Phi Delta Phi. *Member*, Tulane Moot Court Board. *Member*: New Orleans, Louisiana State and American Bar Associations.

John J. Weigel, born New Orleans, Louisiana, February 4, 1932; admitted to bar, 1956, Louisiana. Preparatory education, Louisiana State University; legal education, Tulane University (LL.B., 1956). *Fraternities*: Phi Delta Phi; Omicron Delta Kappa. *Member*: New Orleans, Louisiana State and American Bar Associations.

Donald L. King, born New Orleans, Louisiana, September 19, 1933; admitted to bar, 1956, Louisiana and U. S. District Court, Eastern District of Louisiana. Preparatory education, Tulane University (A.B., 1954); legal education, Tulane University (LL.B., 1956). *Fraternities*: Phi Beta Kappa; Omicron Delta Kappa; Phi Delta Phi. *Member*, Board of Editors, Tulane Law Review, 1954-1956. *Member*: New Orleans, Louisiana State and American Bar Associations.

James Larkin Selman, II, born New Orleans, Louisiana, June 24, 1934; admitted to bar, 1959, Louisiana. Preparatory education, University of Notre Dame and Tulane University (B.A., 1957); legal education, Tulane University (LL.B., 1959). *Fraternity*: Phi Delta Phi. *Member*: New Orleans and Louisiana State Bar Associations.

Charles K. Reasonover, born New Orleans, Louisiana, March 30, 1934; admitted to bar, 1960, Louisiana. Preparatory education, Louisiana State University (B.S., 1955); legal education, Tulane University (LL.B., 1960). *Fraternity*: Phi Delta Phi. *Member*, Board of Editors, Tulane Law Review, 1959-1960. *Member*: Louisiana State and American Bar Associations.

Thomas P. Walshe, Jr., born New Orleans, Louisiana, February 17, 1934; admitted to bar, 1958, Louisiana. Preparatory education, Loyola University (A.B., 1958); legal education, Loyola University (LL.B., 1958). *Fraternities*: Delta Theta Phi; Blue Key; Alpha Sigma Nu; Delta Epsilon Sigma. *National President*, Association of International Relations Societies, 1956-1957. *Member*: Louisiana State Bar Association.

Quintin T. Hardtner, III, born Shreveport, Louisiana, March 5, 1936; admitted to bar, 1961, Louisiana. Preparatory education, Tulane University of Louisiana (B.B.A., 1957); legal education, Tulane University of Louisiana (LL.B., 1961). *Fraternity*: Phi Delta Phi. *Member*: Louisiana State Bar Association.

Edmond C. Salassi, born New Orleans, Louisiana, September 5, 1933; admitted to bar, 1961, Louisiana. Preparatory education, Georgetown University, Tulane University of Louisiana and Centenary College (B.A., 1955); legal education, Tulane University (LL.B., 1958). *Fraternity*: Phi Delta Phi. *Member*: New Orleans, Louisiana State and American Bar Associations.

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JONES, WALKER, WAECHTER, POITEVENT, CARRÈRE & DENÈGRE (Continued)

of Louisiana (LL.B., 1961). *Fraternities:* Omicron Delta Kappa; Phi Delta Phi. *Chief Justice, Tulane*

Moot Court Board, 1960-1961. *Member:* Louisiana State and American Bar Associations.

REPRESENTATIVE CLIENTS: The Bank of New Orleans; The National Bank of Commerce in New Orleans; Brown's Velvet Dairy Products, Inc.; Canal Assets, Inc.; The Louisiana Coca-Cola Bottling Co., Ltd.; Holsum Bakeries, Inc.; Keller Construction Corp.; Leon Israel & Bros., Inc.; McIlhenny Co.; Penick & Ford, Ltd., Inc.; Southern Pine Assn.; Southdown, Inc.; Standard Supply & Hardware Co.; Dr. G. W. Tichenor's Antiseptic Co.; Winn-Dixie La., Inc.; Liberty Mutual Insurance Co.; The Mutual Life Insurance Co. of New York; Neare, Gibbs & Co.; The Prudential Insurance Co. of America; The Travelers Insurance Co.; The Travelers Insurance Co.; Western Casualty & Surety Co.; Austral Oil Co., Inc.; Francis A. Callery; Continental Oil Co.; Louisiana-Delta Offshore Corp.; John W. Meecom; Mobil Oil Co.; Texaco Inc.; Union Producing Co.; United Gas Pipe Line Co.; Canal Barge Co., Inc.; Central Gulf Steamship Corp.; Compania Maritima Unidas, S. A.; National Airlines, Inc.; New Orleans Public Belt Railroad; New Orleans Public Service, Inc.; Ryder System, Inc.

EDWARD A. KALINSKI

(Successor to Dreyfous & Kalinski)

*General Civil Practice
Probate, Corporation and
Real Estate Law*

1609 NATIONAL BANK OF COMMERCE BUILDING
NEW ORLEANS 12, LOUISIANA

Telephone
JACKSON 5-8441

Felix J. Dreyfous (1857-1946).

George A. Dreyfous (1894-1961).

Edward A. Kalinski, born Mobile, Ala., Feb. 14, 1913; adm. to bar, 1941, Louisiana. Prep. education, Loyola University in New Orleans; legal education, Tulane University. *Member:* Louisiana State and American Bar Associations.

ASSOCIATE

Bruce J. Borrello, born New Orleans, Louisiana, September 19, 1932; admitted to bar, 1954, Louisiana. Preparatory education, Louisiana State University and A. and M. College (B.A., 1953); legal education, Tulane University (LL.B., 1961). *Member:* Louisiana State Bar Association.

*General Civil Practice,
State and Federal Courts,
Corporation, Real Estate,
Oil and Gas, Probate, Estate
and Banking Law*

KEPPER, MOULIN & KEPPER

515 HIBERNIA BANK BUILDING
NEW ORLEANS 12, LOUISIANA

Telephone
524-0774

MEMBERS OF FIRM

James H. Kepper, Jr., born New Orleans, Louisiana, March 14, 1912; admitted to bar, 1935, Louisiana. Preparatory education, Tulane University (B.A., 1933); legal education, Tulane University (LL.B., 1935). *Fraternity:* Phi Beta Kappa. Member, Board of Editors, Tulane Law Review, 1933-35. *Member:* New Orleans and Louisiana State Bar Associations.

Albert E. Moulin, born New Orleans, Louisiana, November 6, 1889; admitted to bar, 1919, Louisiana. Education, Loyola University, New Orleans, La. (LL.B., 1919). Public Administrator, 1948-1950. *Member:* New Orleans and Louisiana State Bar Associations.

Stewart J. Kepper, born New Orleans, Louisiana, April 28, 1919; admitted to bar, 1942, Louisiana.

Preparatory education, Tulane University (A.B., 1940); legal education, Tulane University (LL.B., 1942). *Fraternity:* Phi Delta Phi. Member, 1940-1942 and Chairman, 1941-1942, Moot Court Board, Tulane University. *Member:* New Orleans, Louisiana State and American Bar Associations.

ASSOCIATE

John M. Currier, born Knoxville, Tennessee, September 9, 1930; admitted to bar, 1959, Louisiana. Preparatory education, Tulane University (B.S. in Ch. E., 1955); legal education, Tulane University of Louisiana (LL.B., 1959). *Fraternity:* Phi Delta Phi. Special Counsel to the Attorney General, 1959—. *Member:* Louisiana State and American Bar Associations.

(This and others)



Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857 - 62

[Title omitted]

PLAINTIFFS' OPPOSITION TO MOTION OF WHITNEY NATIONAL
BANK IN JEFFERSON PARISH TO INTERVENE AS A DEFENDANT.

Come now the plaintiffs, Bank of New Orleans & Trust Company and Guaranty Bank & Trust Company, and oppose the Motion of Whitney National Bank in Jefferson Parish to intervene as a defendant in these proceedings for the following reasons:

1. Whitney National Bank in Jefferson Parish is not the real party in interest in this controversy. Applicant is merely the corporate alter ego of Whitney National Bank of New Orleans and therefore should not be permitted to prosecute any action on its own behalf in this proceeding as a matter of right or permission; and said applicant cannot in any respect adequately represent the real interest involved, which is that of the Whitney National Bank of New Orleans to open and operate a new branch or branches in Jefferson Parish, Louisiana, in circumvention of *Section 36* of the National Bank Act.

Respectfully submitted,

EDWARD L. MERRIGAN
Attorney for Plaintiffs,
425 13th St., N.W.,
Washington, 4, D.C.

Filed June 21, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

DEFENDANT'S RESPONSE TO MOTION OF WHITNEY NATIONAL
BANK IN JEFFERSON PARISH TO INTERVENE AS A DEFENDANT

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion of Whitney National Bank in Jefferson Parish to intervene as a defendant in this action.

/s/ JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

/s/ DONALD B. MACGUINEAS,
/s/ DAVID V. SEAMAN,
*Attorneys, Department of Justice,
Attorneys for Defendant.*

Of Counsel:

DAVID C. ACHESON,
United States Attorney

Filed June 26, 1962

STATE OF LOUISIANA,
Parish of Orleans.

Before me the undersigned authority, personally came and appeared: MORGAN L. WHITNEY, who being duly sworn did depose and say: That he is of full age, a resident of the City of New Orleans, Vice President of the Whitney National Bank of New Orleans and member of the Board of Directors of the Louisiana Bankers Association; that:

(1) he attended a special meeting of the Board of Directors of the Louisiana Bankers Association held at Baton Rouge, January 24, 1962 called to consider a so-called Uniform State Bank Holding Company Bill which has been introduced in the Louisiana Legislature as House Bill No. 1221 (See Exhibit A attached), the passage of which is now being strenuously urged by Plaintiff, Bank of New Orleans & Trust Co. (see telegrams of Lawrence A. Merrigan, President, Exhibits B and C);

(2) at said meeting a resolution was offered by John Oulliber, President of National Bank of Commerce in New Orleans, to amend said House Bill No. 1221 by adding thereto a subsection 5 to Section 3 which would specifically prevent Whitney National Bank of Jefferson Parish, though completely organized, to commence business whether or not a certificate to commence business has been received from the Comptroller (see Exhibit D attached).

(3) Said resolution proposed by Mr. Oulliber was adopted by a vote of four to one. Two of the members voting in favor of the amendment were Lawrence A. Merrigan, President of plaintiff, Bank of New Orleans and Trust Company and Clebert C. Smith, Director of the National Bank of Commerce in Jefferson Parish and an Executive Vice President of National Bank of Commerce in New Orleans.

MORGAN L. WHITNEY.

Sworn to and subscribed before me at New Orleans, La., this 25 day of June, 1962.

BARTHOLOMEW P. SULLIVAN, JR.
Notary Public.

Regular Session, 1962

H. B. No. 1221

1 HOUSE BILL No. 1221—

2 By Mr. Angelle (By Request):

3 AN ACT

4 To define the bank holding company, to prohibit the forma-
5 tion of new bank holding companies, and to control the
6 future expansion of existing bank holding companies and
7 of their subsidiaries.

8 SECTION 1. DECLARATION OF POLICY.

9 It is declared to be the policy of this State to protect
10 and to foster the growth of the independent unit bank, and
11 institution whose ownership and origins are grounded in the
12 local community and whose activities are bound up with
13 local economic and social organizations; to prevent the un-
14 desirable concentration of control in the banking field to the
15 detriment of the public interest; to insure effective competi-
16 tion among all banking institutions; and, to accomplish these
17 objectives by prohibiting the formation of new banking
18 holding companies and the acquisition of control by what-
19 ever means of additional banking institutions by existing
20 bank holding companies and by their subsidiaries.

21 SECTION 2. DEFINITIONS.

22 (a) "Bank holding company" means any company, in-
23 cluding a bank, (1) which directly or indirectly owns, con-
24 trols, or holds with power to vote, 15 per centum or more
25 of the voting shares of any bank, or (2) which controls in
26 any manner the election of a majority of the directors of
27 any bank, or (3) for the benefit of whose shareholders or
28 members 15 per centum or more of the voting shares of
29 any bank or a bank holding company is held by trustees;
30 and for the purposes of this Act, any successor to any such
31 company shall be deemed to be a bank holding company
32 from the date as of which such predecessor company became

7/1/62

EXHIBIT A

1 a bank holding company. Notwithstanding the foregoing,
2 (A) no company shall be a bank holding company by virtue
3 of its ownership or control of shares acquired by it in
4 connection with its underwriting of securities and which
5 are held only for such period of time as will permit the
6 sale thereof upon a reasonable basis, and (B) no company
7 formed for the sole purpose of participating in a proxy
8 solicitation shall be a bank holding company by virtue of
9 its control of voting rights of shares acquired in the course
10 of such solicitation.

11 (b) "Company" means any corporation, business trust, part-
12 nership, ^{indiv. co.,} joint venture, association, or similar organization
13 ~~doing business in this State~~, but shall not include (1) any
14 corporation the majority of the shares of which are owned
15 by the United States or by any State, or (2) any corpora-
16 tion of community chest, fund, or foundation organized
17 and operated exclusively for religious, charitable, or ed-
18 ucational purposes, no part of the net earnings of which
19 inures to the benefit of any private shareholder or in-
20 dividual, and no substantial part of the activities of which
21 is carrying on propaganda, or otherwise attempting to in-
22 fluence legislation.

23 (c) "Bank" means any commercial bank, savings bank,
24 trust company or similar organization doing business in this
25 State.

26 (d) "Subsidiary," with respect to a specified bank holding
27 company, means (1) any company 15 per centum or more of
28 whose voting shares (excluding shares owned by the United
29 States or by any company wholly owned by the United
30 States) is owned or controlled by such bank holding company;
31 or (2) any company the election of a majority of whose di-
32 rectors is controlled in any manner by such bank holding

1 company; or (3) any company 16 per centum or more of
2 whose voting shares are held by trustees for the benefit of
3 the shareholders or members of such bank holding company.

4 (e) The term "successor" shall include any company which
5 acquires directly or indirectly from a bank holding company
6 shares of any bank, when and if the relationship between
7 such company and the bank holding company is such that
8 the transaction effects no substantial change in the control
9 of the bank or beneficial ownership of such shares of such
10 bank.

11 SECTION 3. PROHIBITIONS UPON ACQUISITIONS OF
12 BANK SHARES OR ASSETS.

13 It shall be unlawful (1) for any action to be taken which
14 results in a company or a bank becoming a bank holding
15 company as defined in this Act; (2) for any bank holding
16 company or subsidiary thereof to acquire direct or indirect
17 ownership or control of any voting shares of any bank if,
18 after such acquisition, such company or subsidiary will directly
19 or indirectly own or control more than 5 per centum of the vot-
20 ing shares of such bank; (3) for any bank holding company or
21 subsidiary thereof to acquire all or substantially all of the as-
22 sets of a bank; or (4) for any bank holding company or sub-
23 sidiary thereof to merge or consolidate with any other bank
24 holding company or any subsidiary thereof. Notwithstanding
25 the foregoing, this prohibition shall not apply to additional
26 shares acquired by a bank holding company in a bank in which
27 such bank holding company owned or controlled a majority
28 of the voting shares prior to such acquisition.

29 SECTION 4. PENALTIES.

30 Any bank, bank holding company, company, or any subsid-
31 iary of any of them which willfully violates any provision
32 of this Act, or any regulation or order issued by the State

1 Bank Commissioner pursuant thereto, shall upon conviction
2 be fined not less than \$500 nor more than \$1,000 for each
3 day during which the violation continues. Any individual
4 who willfully participates in a violation of any provision
5 of this Act shall upon conviction be fined not less than
6 \$1,000 nor more than \$5,000 or imprisoned not more than
7 one year, or both.

8 SECTION 5. ADMINISTRATION.

9 The State Bank Commissioner shall administer and carry
10 out the provisions of this Act and may issue such regulations
11 and orders as may be necessary to discharge this duty and
12 to prevent evasions of the Act.

13 SECTION 6. SAVINGS CLAUSE.

14 Nothing herein contained shall be interpreted or con-
15 strued as approving any act, action, or conduct which
16 is or has been or may be in violation of any existing law,
17 nor shall anything herein contained constitute a defense
18 to any action, suit or proceeding pending or hereafter in-
19 stituted on account of any prohibited antitrust or mono-
20 polistic act, action, or conduct.

21 SECTION 7. SEPARABILITY.

22 If any provision of this Act or the application of such
23 provision to any person or circumstance, shall be held in-
24 valid, the remainder of the Act, and the application of
25 such provision to persons or circumstances other than those
26 to which it is held invalid, shall not be affected thereby.

EXHIBIT B

DOMESTIC SERVICE	
Check the class of service desired; otherwise this message will be sent as a fast telegram	
TELEGRAM	
DAY LETTER	
NIGHT LETTER	

\$
S
E

WESTERN UNION

TELEGRAM

1206 (4-33)

W. P. MARSHALL, PRESIDENT

INTERNATIONAL SERVICE	
Check the class of service desired; otherwise the message will be sent at the full rate	
FULL RATE	
LETTER TELEGRAM	
SHORE SHIP	

NO. WDS.-CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	TIME FILED

Send the following message, subject to the terms on back hereof, which are hereby agreed to

C. A. Henricks Jr, President

Guaranty Bank & Trust Co.

Gretna La.

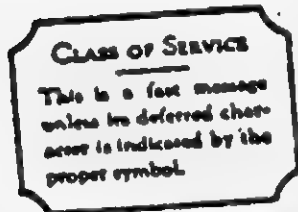
If your primary interest is to preserve the independent unit banks in Louisiana and protect them against the unfair advantage of State wide branch banking, please immediately wire or call your representative in the State Legislature. Support of House Bill 1221 will guarantee maintenance of the unit independent banking system. Present State laws do not permit State Wide branch banking. House Bill 1221 prohibits State Wide branch banking through holding companies. The experience of those States permitting branch banking proves conclusively that independent banking cannot compete and results in the reduction of the number of banks in the State. I strongly urge your support of House Bill 1221. The matter is before the house of Representatives at this time.

(Signed) Lawrence A. Merrigan, President

Bank of New Orleans and Trust Company

Lawrence A. Merrigan

Exhibit 3



WESTERN UNION

TELEGRAM

27-1201 (4-67)



W. P. MARSHALL, President

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination.

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C A HENRICKS JR, PRESIDENT

GUARANTY BANK & TRUST CO GRETN LA

REGARDING TELEGRAM YOU RECEIVED FROM W. MCK. O'NEILL, W. P. SEVIER, JR., AND C. RUPERT EVANS, IN ORDER THAT YOU WILL FULLY UNDERSTAND HOUSE BILL 1221, FOR QUITE SOME TIME AN ACCEPTED AMENDMENT BY THE SPONSOR PROHIBITS CORPORATIONS FROM WITHOUT THE STATE, AS WELL AS CORPORATIONS WITHIN THE STATE, FROM BUYING BANK STOCKS. THUS WE ARE IN FULL AGREEMENT ON THIS POINT. STRONGLY AGREE LOUISIANA BANKERS ASSOCIATION SHOULD HAVE IMMEDIATE AND KNOWLEDGEABLE INTEREST IN THIS LEGISLATION. A SPECIAL MEETING HAS BEEN CALLED FOR SATURDAY, JUNE 23, 2:00PM, CAPITOL HOUSE, BATON ROUGE. UNDERSTAND ANY INTERESTED LBA MEMBER WELCOME FOR DISCUSSION. IN ANY EVENT, AGAIN URGE YOUR SUPPORT FOR HOUSE BILL 1221, AND SUGGEST YOU DO NOT OPPOSE IT. IT WILL BE IMPOSSIBLE

TO INTRODUCE ANY NEW LEGISLATION ON THIS MATTER UNTIL TWO YEARS HENCE. OBVIOUSLY THIS WOULD BE MUCH TOO LATE TO STOP THE SPREAD OF STATEWIDE HOLDING COMPANY BRANCHES. THIS BILL IS SPECIFICALLY DESIGNED TO PRESERVE AND PROTECT THE INDEPENDENT UNIT BANKS IN LOUISIANA, AND IS THE LEGISLATION FOR A UNIFORM STATE BANK HOLDING COMPANY ACT RECOMMENDED BY THE INDEPENDENT BANKERS ASSOCIATION

LAWRENCE A. MERRIGAN, PRESIDENT. THE BANK OF NEW ORLEANS AND TRUST CO.

W. P. Marshall

Exhibit C

EXHIBIT D

PROPOSED AMENDMENT TO SECTION 3 OF HOUSE BILL NO. 1221

Add new Sub-section (5) as follows:

"(5) for any bank holding company or subsidiary thereof to open for business any bank not now open for business whether or not a charter, permit, license or certificate to open for business has already been issued."

Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

CITY OF WASHINGTON,
District of Columbia, ss:

Lawrence A. Merrigan, being duly sworn, deposes and says:

1. I am the President of plaintiff, Bank of New Orleans & Trust Company, and I submit this affidavit for the following reasons and to bring the following facts before the Court:

(a) I want to verify that I have read the complaint herein and the affidavit of plaintiffs' counsel submitted in support of the motion for preliminary injunction, and to the best of my knowledge, information and belief all allegations and matters therein set forth are true and correct.

(b) I want to verify for this Court also that unless the Court grants the preliminary injunction prayed for herein, plaintiff, Bank of New Orleans & Trust Company, will suffer severe, permanent and irreparable damage for which it has no adequate remedy. As stated in the complaint, to permit the establishment of a branch of the Whitney National Bank of New Orleans in Jefferson Parish, Louisiana at a time when this plaintiff and all state banks similarly situated are confined by law to the limits of Orleans Parish would cause vast damage to our property and business, principally as regards the very substantial banking business of this bank emanating from sources in Jefferson Parish. We would be confronted with what we believe to be a new, impossible-to-meet competition from the combined resources of the largest bank in Louisiana.

(c) I have received from the State Bank Commissioner of Louisiana and file herewith copies of the following documents:

(i) *copy of letter* dated June 21, 1962, written by the the said State Bank Commissioner of Louisiana to the

Chairman of the Board of Governors of the Federal Reserve System.

(ii) *certified copy of letter opinion* of the Attorney General of Louisiana, J. P. F. Gremillion, dated June 13, 1962, addressed to the State Bank Commissioner of Louisiana.

(d) I have received from plaintiffs' attorney herein, who obtained same from the Executive Office of the President, copy of Memorandum, addressed on March 28, 1962, to the Attorney General, the Comptroller of the Currency and other officials of the federal government, which Memorandum purports to establish a Committee on Financial Institutions, to include the defendant in this action. A copy of said Memorandum of the President of the United States is filed herewith.

(e) Plaintiffs' attorneys have received and I file herewith copy of letter of the Federal Reserve Board of Governors, dated June 25, 1962.

(f) I understand the Comptroller herein has refused to make available copies of any letters which passed between the Comptroller's office and the Federal Reserve Board, or between the Comptroller's offices and attorneys or representatives of the Whitney National Bank or Whitney Holding Corporation with reference to the matters involved in this action.

The Federal Reserve Board, however, has released to us a copy of a letter filed in 1961 with said Board by the Comptroller of the Currency, and said letter is filed herewith.

LAWRENCE A. MERRIGAN.

Sworn to and subscribed before me this 26th day of June, 1962.

ROSE W. DENNIS
Notary Public.

My Commission Expires May 14, 1965.

Received June 14, 1962

PLAINTIFFS' EXHIBIT E

STATE OF LOUISIANA
Department of Justice
Baton Rouge

Jack P. F. Gremillion
Attorney General

June 13, 1962.

Mr. J. W. Jeansonne,
State Bank Commissioner,
State Capitol,
Baton Rouge, Louisiana.

Dear Commissioner Jeansonne:

This is in reference to your request for an opinion as to (1) whether there is any prohibition in our law of the formation of a national bank holding company by shareholders of a national bank, and (2) if there is no prohibition, whether a national bank holding company may own controlling interest in and operate a branch bank in a parish other than the domicile of the holding company.

We have been unable to find any law which would prohibit the organization and incorporation of such a holding company in the State of Louisiana. In our opinion, under Louisiana law, such a corporation would be considered, for purposes of incorporation, as any other corporation. In fact, I am sure you will recall that some months ago we verbally discussed the matter stated by the first question you pose. We researched the law and concluded in our verbal discussions that there were no violations of Louisiana law, nor prohibitions, that would prevent a national bank from organizing a holding company. We so advised you and we wish now to reiterate our affirmation.

We issued an opinion to you on August 10, 1961, relating to the formation of the Whitney Holding Corporation and the creation by it of the Crescent City National Bank, but that opinion dealt specifically with the question of exemption of issuance of the securities of the Holding Corporation from the provisions of the Louisiana Securities Law, R.S.

51:701, et seq. We held that such securities were exempt within the meaning of R.S. 51:705.

With reference to the second portion of your request, we wish to advise as follows:

R.S. 6:54 provides as follows:

"All banks, savings banks, and trust companies having a capital of one hundred thousand dollars or more may open and maintain a branch office or branch offices in parishes in which there are no state banks, savings banks, and trust companies.

"Not more than one branch office shall be opened in any one parish other than the parish of domicile, and such branch office shall be included in the number of branch offices authorized by Chapters 3 and 4 of this Title. The Branch offices may carry on and conduct all usual transactions authorized by this Title for branch offices.

"No branch office shall be opened without a certificate of authority from the commissioner."

It is evident from a reading of the above statute that the same is intended to prohibit branch banks outside of the Parish in which the main office of a bank is domiciled. The exemptions provided in R.S. 6:55 (the Parishes of Allen, Calcasieu, Cameron, or Jefferson Davis) were made to maintain the status quo of those banks at the time of the passage of these laws.

Our branch banking laws in the State of Louisiana emanated from the well-established belief that the various communities and political sub-divisions of the State can be best served by local banks, which would obviously have peculiar knowledge and information concerning the people and community of the various areas served, and of the belief that such local banks would have a greater interest in the welfare of the specific community or area. It is also generally accepted that a bank, properly operated and regulated, can be the best industry a community may have. It follows, therefore, that it is to the best interest of a community to have such an important institution owned and operated by the citizens of said community, which of course will have a greater interest in the development, growth, and welfare of said community.

Under the Federal law, 12 U.S.C.A. 36(c), a national banking association, with the approval of the Comptroller of the Currency, may establish new branches at any point within a state in which said Association is situated, if such establishment and operation are at the time authorized to state banks by state law. Although we can find no prohibition against the establishment of a bank holding company, we are of the firm opinion that a banking operation may not accomplish by an indirect means, such as a holding company device, what is prohibited directly by law. There is a general principle of law that corporate entities must be disregarded where they are made the implements for avoiding a clear legislative purpose. To allow the establishment of a bank holding company to avoid and circumvent the branch banking laws of our State is, in our opinion, prohibited, if not by the letter, by the spirit of our law.

Evidence of the legislative intent, in this connection, in our opinion, is contained in House Bill No. 1221, which has been introduced and is pending in the Legislature at this time. This Act has for its purpose the prohibition of the formation of bank holding companies. It is interesting to note Section 1 of said Bill, which is a declaration of policy:

"It is declared to be the policy of this State to protect and to foster the growth of the independent unit bank, an institution whose ownership and origins are grounded in the local community and whose activities are bound up with local economic and social organizations; to prevent the undesirable concentration of control in the banking field to the detriment of the public interest; to insure effective competition among all banking institutions; and, to accomplish these objectives by prohibiting the formation of new banking holding companies and the acquisition of control by whatever means of additional banking institutions by existing bank holding companies and by their subsidiaries."

Also, Section 6 of said House Bill No. 1221 provides:

"Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of any existing law, nor shall anything herein contained constitute a defense to any action, suit or proceeding pending or

hereafter instituted on account of any prohibited anti-trust or monopolistic act, action, or conduct."

It is the opinion of this office, therefore, that a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of the parent company.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG:emc

STATE OF LOUISIANA,
Parish of East Baton Rouge.

This is to certify that the above and foregoing is a true and correct photostatic copy of the opinion of the Attorney General, rendered June 13, 1962, addressed to Mr. J. W. Jeansonne, State Bank Commissioner, and signed by Jack P. F. Gremillion, Attorney General.

J. W. JEANSONNE,
State Bank Commissioner.

Sworn to and subscribed before me this 25th day of June, 1962.

JOSEPH H. KAVANAUGH,
Notary Public.

Filed June 26, 1962

PLAINTIFFS' EXHIBIT F

STATE OF LOUISIANA
State Banking Department
Baton Rouge 4, Louisiana

June 21, 1962

Honorable William McChestney Martin, Jr.,
Chairman,
Board of Governors of the
Federal Reserve System,
Washington 4, D.C.

Dear Mr. Chairman:

I am taking the liberty of enclosing an opinion from our Attorney General in the State of Louisiana that is self-explanatory.

As Commissioner of the Banking Department in the State of Louisiana, I earnestly request that a re-hearing be granted in the matter of approving the plan of the Whitney Holding Corporation, New Orleans, Louisiana, under your ruling of May 3, 1962. In my opinion this ruling seriously affects all State Banks in Louisiana.

On behalf of my Department, I would like to personally appear and voice my opposition. If it is at all feasible I would appreciate the new hearing to be held either in New Orleans or Baton Rouge, Louisiana, at a time convenient to your Board.

Thanking you for your consideration, I remain

Sincerely yours,

J. W. JEANSONNE
State Bank Commissioner.

JWJ/bc
Enclosure

PLAINTIFFS' EXHIBIT H

Received in Records Section October 12, 1961

TREASURY DEPARTMENT
Comptroller of the Currency
Washington 25

October 11, 1961

Board of Governors of the
Federal Reserve System
Washington 25, D.C.

Gentlemen:

This will have reference to your letter of July 24, 1961, in which you advise that an application has been filed on behalf of Whitney Holding Corporation (a proposed corporation), New Orleans, Louisiana, to the Board of Governors for prior approval by the Board of action to become a bank holding company through the acquisition of all the voting shares to be issued of each of the following banks: Crescent City National Bank (into which would be consolidated the existing Whitney National Bank of New Orleans, and with the name Whitney National Bank of New Orleans), New Orleans, Louisiana, and Whitney National Bank in Jefferson Parish, Louisiana, which has been approved and is now in organization.

In determining whether or not to recommend your approval of this transaction careful consideration has been given to the following factors: (1) the financial history and condition of the applicant and the banks concerned; (2) the prospects of the applicant and the banks concerned; (3) the character of the management of the applicant and the banks concerned; (4) the convenience, needs and welfare of the communities and the area concerned; and (5) whether or not the effect of the proposed transaction for which approval is desired would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

In view of the favorable conditions disclosed by this study it is recommended that you give your approval to this application.

At your request we shall be pleased to discuss in detail the various aspects upon which this recommendation is based.

Sincerely,

RAY M. GIDNEY,
Comptroller of the Currency.

PLAINTIFF'S EXHIBIT I

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
Washington 25, D.C.

June 25, 1962.

Edward L. Merrigan, Esquire,
425 - 13th Street, N.W.,
Washington 4, D.C.

Dear Mr. Merrigan:

With your letter dated June 13, 1962, you filed with the Board of Governors, on behalf of three banks located in Louisiana, a Petition for Reconsideration by the Board of its Order of May 3, 1962 (1962 Federal Reserve Bulletin 560), under the Bank Holding Company Act of 1956, permitting Whitney Holding Corporation to become a bank holding company by acquiring substantially all of the voting stock of a bank in New Orleans, Louisiana, and a bank in Jefferson Parish, Louisiana. The Petition requested that the Board revoke its Order of May 3, 1962 and "grant a rehearing herein and after reconsideration by appropriate Order deny the application of the Whitney Holding Corporation."

A Notice of Receipt of the Application on Behalf of Whitney Holding Corporation was published in the Federal Register on July 28, 1961 (26 Federal Register 6792), which provided an opportunity for submission of comments and views regarding the proposed acquisitions. Later, pursuant to Order published in the Federal Register on December 23, 1961 (26 Federal Register 12312), a public proceeding with respect to said Application was held before the Board on January 17, 1962 to provide a further opportunity for the expression of views and opinions by interested persons. The banks represented by you did not submit or express any

comments, views, or opinions. Most of the actions contemplated by the Whitney Reorganization Program, including the acquisitions of stock approved by the Board in its Order of May 3, 1962, were completed, according to information received by the Board, during May 1962, and, as indicated above, your clients' Petition for Reconsideration was submitted to the Board with your letter dated June 13, 1962.

Subparagraph (6) of section 262.2(f) of the Rules of Procedure of the Board of Governors (12 Code of Federal Regulations 262.2(f)(6)), relating to "Bank Holding Company and Merger Applications", reads as follows:

"After action by the Board on an application the Board will not grant any request for reconsideration of its action, unless the request presents relevant facts that, for good cause shown, were not previously presented to the Board, or unless it otherwise appears to the Board that reconsideration would be appropriate."

The Board has considered the reasons advanced in the Petition for Reconsideration. To a considerable extent, these are based upon allegations that the Whitney Reorganization Program was not in conformity with applicable provisions of Federal statutes. It is also alleged that the Board's action "will unnecessarily place into the hands of federally chartered banks a powerful and unfair competitive advantage over State banks" In the judgment of the Board, those arguments are without substantial merit. In addition, they relate largely to an alleged violation of provisions of the National Bank Act, which is administered by the Comptroller of the Currency, an official of the United States Treasury Department.

In its consideration of the Petition, the Board has also taken into consideration the fact that the Petitioners had ample opportunity to present relevant facts, views, and arguments to the Board during the pendency of the Whitney Holding Corporation proceeding and failed to make any presentation until after the proceeding had terminated, the Board's Order of approval had been issued, and most of the steps in the Reorganization Program had been completed. For the foregoing reasons, the Petition for Reconsideration, Revocation, and Rehearing is denied.

As you are aware, section 9 of the Bank Holding Company Act (12 U.S.C. 1848) relates to judicial review of orders of

the Board of Governors under that Act. Section 9 confers a right to such review on "Any party aggrieved by an order of the Board under this Act". In the event your clients should seek judicial review of the Board's Order in the Whitney matter, the question whether they fall within the quoted description and therefore are entitled to a judicial review is, of course, a question for determination by the United States Court of Appeals having jurisdiction.

In your letter to the Board dated June 18, 1962, you requested access to the letter of October 11, 1961 from Comptroller of the Currency Ray M. Gidney to the Board of Governors, expressing the views and recommendations of the Comptroller on the Whitney Holding Corporation's application, pursuant to section 3(b) of the Bank Holding Company Act (12 U.S.C. 1842(b)). The Board has granted this request, and the Comptroller's letter will be made available for your inspection at your convenience.

Very truly yours,

MERRITT SHERMAN,
Secretary.

Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

Now comes The Bank of Louisiana in New Orleans and respectfully moves the court for leave to intervene as a plaintiff in this action to join with the other plaintiffs herein in seeking the relief prayed for in the original complaint.

The reasons for this motion to intervene are as follows:

(1) Plaintiffs in this action seek a declaratory judgment that the Comptroller of the Currency is prohibited by law from issuing to The Whitney National Bank of New Orleans and/or the Whitney Holding Corporation and/or Whitney National Bank of Jefferson Parish, a certificate of authority authorizing them, or any of them, to establish new branch bank facilities of the Whitney National Bank of New Orleans in Jefferson Parish through the medium of

Whitney Holding Corporation. The Bank of Louisiana in New Orleans is a State bank with its main office in New Orleans, which, like the original plaintiffs herein, is not permitted by law to expand into Jefferson Parish and will therefore be seriously and adversely affected by action of the Comptroller of the Currency in permitting the Whitney National Bank in New Orleans an unfair competitive advantage over State banks similarly situated;

(2) The relief sought by Mover, the Bank of Louisiana in New Orleans, for permission to intervene, as set forth in the attached pleadings, involve the same questions of law and fact as those involved in the main action;

(3) The interests of Mover for intervention may not be properly represented and Mover will be bound by any final judgment rendered in this action;

(4) Intervention by Mover will not delay these proceedings.

G. HARRISON SCOTT,
*Civic Center Building,
New Orleans, Louisiana.*

Filed June 26, 1962

EXHIBIT J

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PETITION OF THE BANK OF LOUISIANA IN NEW ORLEANS, INTERVENING PLAINTIFF, FOR DECLARATORY JUDGMENT AND INJUNCTIVE ORDER.

The Bank of Louisiana in New Orleans, for its complaint in intervention as a party plaintiff, alleges:

1. The Bank of Louisiana in New Orleans is a banking corporation existing under the laws of the State of Louisiana, with its main banking offices in the City of New Orleans, State of Louisiana.

2. The Bank of Louisiana in New Orleans has total assets of approximately \$10,000,000.00 and, like original plaintiffs herein, draws some business from residents of the Parish of Jefferson.

3. This intervening plaintiff believes and alleges that the so-called Whitney National Bank Reorganization Program constitutes nothing more nor less than a device for the evasion of federal and state laws prohibiting the establishment of branch banks in parishes beyond the parish of the bank's main office, which, if permitted, will directly adversely affect the business and property of this intervening plaintiff.

Plaintiff herein reiterates as though copied herein in extenso, the allegations of fact contained in the original complaint filed herein, particularly Paragraphs 7 through 17.

4. The Attorney General for the State of Louisiana, in answer to inquiries by the State Banking Commissioner, for an opinion as to the legality of such a bank holding company plan, has rendered as his opinion that "It is the opinion of this office, therefore, that a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of the parent company."

WHEREFORE, the Bank of Louisiana in New Orleans prays that the court enter judgment herein declaring and adjudging that the Comptroller of the Currency is prohibited by law from issuing to The Whitney National Bank of New Orleans and/or the Whitney Holding Corporation and/or The Whitney National Bank of Jefferson, a certificate of authority authorizing them, or any of them, to establish new branch bank facilities known as The Whitney National Bank in Jefferson Parish or otherwise in the Parish of Jefferson, Louisiana, and in order to prevent irreparable injury to this plaintiff, joins with the original plaintiffs herein, requesting that this Court grant a preliminary injunction and ultimately a permanent injunction restraining and enjoining the Comptroller of Currency from issuing a certificate or certificates authorizing the establishment of new branch bank facilities by the Whitney National Bank or Whitney Holding Corporation or Whitney National

Bank of Jefferson Parish, or in any other name in the Parish of Jefferson, State of Louisiana.

Intervening plaintiff prays for such general and other equitable relief.

G. HARRISON SCOTT,
Civic Center Building,
New Orleans, Louisiana.

Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION FOR VOLUNTARY DISMISSAL BY MERCHANTS TRUST AND
SAVINGS BANK

NOW COMES Merchants Trust & Savings Bank, through its undersigned counsel, and pursuant to Rule 41(a)(1)(i), Federal Rules of Civil Procedure, and without prejudice to the rights of plaintiffs, Bank of New Orleans and Trust Company and Guaranty Bank and Trust Company, hereby dismisses this action in its own behalf only and without prejudice for the reasons set forth in the affidavit of counsel for the said Bank attached hereto.

EDWARD L. MERRIGAN,
425 13th Street, N.W.
Washington 4, D.C.,
Attorney for Plaintiffs.

PAUL F. ROGYOM,
P.O. Box 184, Kenner, Louisiana,
Attorney for Merchants Trust and Savings Bank.

Filed June 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF APPLICATION FOR WITHDRAWAL OR
DISCONTINUANCE OF SUIT BY PLAINTIFF, MERCHANTS TRUST
AND SAVINGS BANK.

STATE OF LOUISIANA,
Parish of Orleans.

Before me, the undersigned Notary Public, personally
came and appeared:

PAUL F. ROGYOM who, being duly sworn, deposes and says:

(1) That I am an attorney at law and I have appeared in this action as counsel on behalf of plaintiff, Merchants Trust & Savings Bank of Kenner, Louisiana. I submit this affidavit in support of the motion to dismiss, withdraw and be dropped as a party plaintiff filed on behalf of said Merchants Trust & Savings Bank of Kenner, Louisiana, (Merchants).

(2) When the complaint in this action was filed on June 9, 1962 I was duly authorized to appear as counsel in that action for the said plaintiff, Merchants Trust & Savings Bank. Said plaintiff then believed, and presently believes, that the allegations contained in the complaint are true and that Merchants will, if the Comptroller of the Currency grants a certificate authorizing the opening of a branch of the Whitney National Bank, suffer damage to its business. However, the Whitney National Bank has injected into this case irrelevant, immaterial and, in some respects, inaccurate statements regarding Merchants which obscure the factual and legal issues presented in this case for determination. Upon reflection, the officers and directors of Merchants for business reasons have concluded that such immaterial assertions concerning Merchants should be eliminated from this suit and desire to accomplish this result by withdraw-

ing as a party plaintiff herein so that the case may proceed on the cause of action set forth on behalf of the remaining plaintiffs.

For the reasons hereinabove stated, it is therefore respectfully prayed that this Court grant the application of plaintiff, Merchants Trust and Savings Bank to withdraw, dismiss and be dropped as a party plaintiff without prejudice to the rights of the remaining plaintiffs and without prejudice to any rights of Merchants.

PAUL F. ROGYOM.

Sworn to and subscribed before me, this 22nd day of June, 1962.

CHARLES A. BYRNE,
Notary Public.

Filed June 27, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER

Now comes the plaintiffs by their undersigned attorney and move this Court as follows:

To grant forthwith and without notice to the defendant personally a temporary restraining order restraining and enjoining the defendant, his agent and employees from issuing a Certificate of Authority, pursuant to *Title 12 U.S.C. § 27* or otherwise, authorizing the opening and operation of bank facilities in Jefferson Parish, Louisiana to be known as the Whitney National Bank in Jefferson Parish, pending a hearing on and disposition of plaintiffs' Motion for Preliminary Injunction filed herein on June 9, 1962, and scheduled by the Court for hearing on July 6, 1962; and for cause refers to the Complaint herein, the affidavit of Lawrence A. Merrigan, President of plaintiff, Bank of

New Orleans and Trust Company, dated June 26, 1962, together with affidavits of the attorney for plaintiffs, dated June 8 and 27, 1962.

EDWARD L. MERRIGAN,
Attorney for Plaintiffs,
425 13th Street, N.W.,
Washington, D. C.

Filed June 27, 1962

CITY OF WASHINGTON,
District of Columbia, ss:

Edward L. Merrigan, being duly sworn, deposes and says:

I am the attorney for plaintiffs herein. At or about the time I filed the complaint and Motion for Preliminary Injunction herein on June 9, 1962, I advised Mr. Robert Bloom, General Counsel to defendant, the Comptroller of the Currency, and Mr. Haddon of the United States Attorney's Office that I likewise intended immediately to apply for a Temporary Restraining Order to enjoin the defendant Comptroller from issuing the Certificate of Authority in issue in this action until the Motion for Preliminary Injunction could be heard by the Court and determined.

Mr. Bloom, acting for the Comptroller, thereupon committed the defendant as follows: The defendant voluntarily undertook and agreed not to issue any Certificate of Authority authorizing the opening and operation of banking facilities in Jefferson Parish, Louisiana, in the name of Whitney National Bank until this Court had heard and determined the said Motion for Preliminary Injunction. I was assured it would thus be unnecessary for plaintiffs to apply for a Temporary Restraining Order herein.

Acting upon this assurance, plaintiffs did not apply for a Restraining Order.

The Court, on June 26, 1962, upon its own motion, and with agreement of the attorneys for plaintiffs and defendant, set down the said Motion for Preliminary Injunction for July 6, 1962 at 10 a.m.

On behalf of plaintiffs, I intend to ask the Court, because of the irreparable damage which otherwise would result, to compel the defendant herein to honor his commitment

to continue to withhold the certificate in issue until the motion for preliminary injunction comes on to be heard on July 6, 1962.

EDWARD L. MERRIGAN.

Sworn to and subscribed before me this 27th day of June, 1962.

[Copy Illegible]
Notary Public.

My Commission Expires January 31, 1967.

Filed June 27, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

TEMPORARY RESTRAINING ORDER

Upon consideration of the Motion for Temporary Restraining Order filed herein on the 27th day of June, 1962, and the Complaint herein filed on the 9th day of June, 1962, the allegations of which were verified by affidavit of Lawrence A. Merrigan, President of plaintiff, Bank of New Orleans and Trust Company, dated June 26, 1962, together with the affidavits of the attorney for plaintiffs, dated June 8 and 27, 1962, it appears to the Court

That the defendant herein, the Comptroller of the Currency, heretofor voluntarily agreed and undertook not to issue any Certificate of Authority, pursuant to *Title 12 U.S.C. § 27*, authorizing the opening and operation of bank facilities in Jefferson Parish, Louisiana to be known as the Whitney National Bank in Jefferson Parish until after this Court had rendered its decision on plaintiffs' Motion for Preliminary Injunction;

That said Motion for Preliminary Injunction was scheduled to be heard by the court on June 27, 1962, but at the suggestion of the Court and by agreement of the attorneys for plaintiffs and defendant herein, the hearing on said motion has been adjourned to July 6, 1962 at 10 o'clock a.m.;

That the defendant herein has advised the Court he is not inclined voluntarily to stay further the issuance of the aforesaid Certificate pending the determination of said Motion for Preliminary Injunction, and that defendant might, if not temporarily restrained, issue his Certificate authorizing the opening and operation of the aforementioned bank facilities in Jefferson Parish, Louisiana before this Court can hear and determine the said Motion for Preliminary Injunction;

That upon issuance of any such Certificate, such bank facilities may be opened and operated forthwith by the applicant for such certificate, and that after the issuance of such certificate, an injunction against the defendant may be of no avail;

That the Complaint herein alleges that the issuance by defendant of his said certificate, authorizing the establishment and operation of bank facilities in Jefferson Parish, Louisiana to be known as Whitney National Bank in Jefferson Parish, would constitute a violation of *Title 12 U.S.C. Sections 36 and 1841, et seq.*;

That it appearing from the sworn allegations of the Complaint and the affidavits before the Court that because of the foregoing, plaintiffs will suffer irreparable injury, loss and damage unless a temporary restraining order be granted, as prayed, it is by the Court this 27th day of June, 1962, at 11:05 o'clock a.m.,

ORDERED, that said defendant and his agents and employees be, and he and they are hereby restrained and enjoined from issuing a Certificate of Authority, pursuant to *Title 12 U.S.C. Section 27* or otherwise, authorizing the opening and operation of bank facilities in Jefferson Parish, State of Louisiana to be known as Whitney National Bank in Jefferson Parish, and it is further,

Ordered, that the plaintiffs, or either of them, shall give security in the sum of \$1000.00, conditioned for the payment of such costs and damages as may be incurred or suffered by said defendant if it be found that he shall be wrongfully restrained, and it is further

Ordered, that this restraining order shall expire on the 6th day of July, 1962, unless extended by order of this Court.

/s/ GEORGE L. HART, JR.,
Judge.

District Court of the United States
for the District of Columbia.

Filed July 7, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

BANK OF NEW ORLEANS & TRUST COMPANY, ET AL., *Plaintiffs,*

vs.

JAMES J. SAXON, *Defendant.*

Washington, D. C.
June 27, 1962

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Before JUDGE GEORGE L. HART, JR.

Prepared for Clerk's Copy

GEORGE G. DAVIS, JR.
Official Reporter,
4808 U. S. Court House,
Washington 1, D. C.,
STerling 3-5700, Ext. 344.

[3] Mr. Bloom: Your Honor, I am Robert Bloom and I am Acting Chief Counsel to the Comptroller of the Currency.

In addition to the question of the time of the argument of the motion, plaintiffs' motion, we have a question of an administrative stay of the issuance of the certificate for the opening of the Whitney National Bank in Jefferson Parish, which is the issue in this case and which is the action which the plaintiff is seeking to enjoin.

Now, the circumstances under which this administrative and voluntary stay on our part arose were these: About twenty days ago, on June the 8th to be exact, which was a Friday, I received a phone call late in the day from the United States Attorney that Mr. Merrigan was in the building attempting to obtain an ex parte temporary restraining order in connection with a complaint for a declaratory judgment and preliminary and permanent in-

junction which he was getting ready to file on that Friday or the following day.

[4] Now, at that time I knew virtually nothing about the facts of the matter because the case—the administrative proceeding had been handled up to that date by my predecessor, the former Chief Counsel, and other personnel in the office. Mr. Saxon was not in the city and since it was so late on a Friday afternoon, Mr. Hannon, the U. S. Attorney, called and said that if we wished to oppose this TRO, that it would probably have to be done the following morning, Saturday morning, and he wanted to know whether it would be possible in this case for us to voluntarily agree to withhold the issuance of this certificate until the argument on the preliminary injunction could be heard.

I made a telephone call to New Orleans to the Whitney Bank people and I was told that the new bank was not quite ready to open, that the schedule called for it to be opened in ten days to two weeks from that time.

On the basis of that information and not knowing anything about the merits of the case, I agreed with Mr. Merrigan that the Comptroller would withhold the issuance of the certificate for the opening of the Jefferson bank until the argument of the preliminary injunction motion but only on condition that that motion was brought on for argument and argued as promptly as the rules of the Court would permit.

[5] Now, since that time, Mr. Merrigan, in my opinion, has done everything he possibly could to delay the hearing of his own motion. Specifically,—

The Court: Do you understand that he did not request this delay yesterday?

Mr. Bloom: Well,—

Mr. Seaman: Yes, Your Honor, we understand that.

Mr. Bloom: I understand, Your Honor.

Mr. Merrigan: I object to that, I have done everything to delay this thing; it was put on for the first time—

The Court: Wait just a minute, just a minute. I just wanted you to know that they did not ask for a delay.

Mr. Bloom: Well, I understand that, but I also understand that late yesterday afternoon in full similarity to the way the action was commenced, Mr. Merrigan filed a monumental brief of some 50 pages on an issue which is essentially a simple issue of law and which made it virtually impossible for Your Honor to hear the motion this morning.

In addition to that, immediately upon our noticing of this motion for argument, which was done by us, incidentally, and not by Mr. Merrigan, Mr. Merrigan requested that the motion be continued until the Federal Reserve Board had had an opportunity to rule on his motion for a rehearing [6] of the action of the Federal Reserve Board on May 3rd in approving the acquisition of the Whitney Jefferson Bank and the formation of the Whitney holding corporation. I told Mr. Merrigan I thought that that application would await the day in the event of the possibility that the Federal Reserve Board had ruled by the time the motion came on. In fact, the Federal Reserve Board ruled on Monday of this week and denied Mr. Merrigan's petition for a rehearing on the question of the legality of the Whitney holding corporation acquiring the stock of Whitney Jefferson Bank which happens to be the very issue at issue in this case.

Secondly, when the Whitney Bank people requested Mr. Merrigan to consent to their appearance as a defendant in this case—this is the Whitney Bank in Jefferson Parish which is the very bank which the plaintiff is seeking to prevent from opening,—Mr. Merrigan refused to consent to their intervention and put them to the task of making a motion for intervention, and, on top of that, Mr. Merrigan has entered an opposition in that motion.

Thirdly, since Mr. Merrigan has come and bombarded me with requests for inspections of records on threat of issuance of subpoena duces tecum, he has asked to see all the correspondence and records in connection with the three or four applications leading up to this final action in this [7] case. This is in spite of the fact that the issue in this case is an issue of law purely and that in all probability every fact in the case can be stipulated by both sides.

Fourthly, last week after Mr. Merrigan had filed this action and had brought on his motion for preliminary injunction, Mr. Merrigan appeared at the office of an Under-Secretary of the Treasury in the company of a United States Senator, an official of the State of Louisiana, for the purpose of having pressure brought on the Comptroller of the Currency to—disregard—

The Court: Well, I am not interested in that. What I am interested in is why it is so essential that this particular motion be heard today by a Judge without adequate prepa-

ration to hear it rather than hearing it on the 6th of July, at which time the Court will have had proper time to study this matter. }

How long did it take you to understand this matter?

Mr. Bloom: Your Honor, the issue in this matter is essentially a simple issue and that is whether the bank, which the Whitney Bank wishes to open in Jefferson Parish, is a branch bank or a——

The Court: Is it a simple issue to an attorney of the Treasury Department or is it a simple issue to a Court of general jurisdiction?

[8] Mr. Bloom: Your Honor, we have no desire at all to rush Your Honor into hearing the motion before he has had a chance to satisfy himself on the reading of the papers submitted, but, in answer to your question as to why it is important that the motion be heard as soon as possible, Judge Hart, I would like to point out that this action, the issuance of this certificate to this bank in Jefferson Parish, is the final ministerial step in a long step transaction and all of the previous steps in this transaction, including the formation of the Whitney holding corporation and the exchange of the stock of the Whitney holding corporation with 1400 stockholders of the Whitney National Bank of New Orleans, has been accomplished. All of the corporate steps leading up to the organization of the new bank in Jefferson Parish have been accomplished, the articles of association have been filed, the certificate of organization has been filed. The bank premises have been purchased. Temporary quarters have been leased across the street. The necessary supplies and personnel are ready to go and actually we have an obligation, we feel, in this case, to the Whitney people, in view of the long administrative road which they have had to travel in this case because, actually, the approval of this matter was granted by the former Comptroller of the Currency, Mr. Gibney, in October of 1961 [9] and since that time it had been common knowledge in New Orleans that the Comptroller had granted his approval subject to the approval of the Federal Reserve Board of the formation of the Whitney holding corporation.

Now, that approval of the Federal Reserve has been forthcoming at the early part of May and the plaintiffs have actually had eight months since the Comptroller indicated his preliminary approval of the matter in October of 1961 to prepare this case, and there is no reason why they should

be coming in at the eleventh hour with a preliminary injunction suit to stop the issuance of a certificate which at this point, after the action of the former Comptroller of the Federal Reserve Board is really an act—a ministerial act on the part of Mr. Saxon. This is the final step to open this bank and the opening of it, the granting of the certificate, will not leave this plaintiff remediless. He has a statutory appeal direct to the Court of Appeals from a decision of the Federal Reserve Board.

In addition to that, he is in court in this case. He has the Comptroller in court and the Whitney Bank people are asking to be the defendants in this case. If at some future time after a full hearing on the merits the Court should find that the—that this bank is actually a branch and not a new independent bank, as we contend, and that the [10] Comptroller did not have legal authority to charter this bank to be owned by the Whitney holding corporation, at that point he would not be remediless because he has asked in his prayer for relief, for declaratory relief.

The Court: Well, counsel, you are arguing the final case on the merits. You still haven't told me why the action of this Court, *sui sponte* in continuing the hearing on the matter from today until the 6th of July, in order that the Court would have an opportunity to study hundreds of pages of briefs and exhibits before deciding the case, should be set aside. Now, why?

Mr. Bloom: Your Honor, I have no objection to the adjournment of the hearing on the motion to July 8—6th—

The Court: Sixth.

Mr. Bloom: —but I must say to Your Honor in all candor, and also to Mr. Merrigan at this point, that in view of Mr. Merrigan's actions, which I believe are calculated, all calculated to delay the action and the hearing of this motion, that I do not feel under any compulsion to delay the issuance of this certificate.

The Court: And I will advise you that unless you agree not to issue the certificate that I will issue a temporary restraining order.

[11] Mr. Bloom: Well, I would certainly request Your Honor, before doing that, to at least give Mr. Monroe, the attorney for the Whitney Bank people, an opportunity to be heard as to the effect of such an order on the situation in Louisiana, which I understand is—has other ramifications.

The Court: Well, I will be very happy to hear you on it but I will not hear it as a preliminary matter. We have many, many people waiting in the court here on previous motions which are short, so if you gentlemen will take a seat back there, I will hear these other motions and then hear you.

Mr. Bloom: All right.

Mr. Merrigan: Thank you.

(Hearing in the aforecaptioned cause was temporarily suspended while other motions on the Court's calendar were disposed of. Thereupon, motion in the aforecaptioned cause continued as follows:)

The Deputy Clerk: Bank of New Orleans and Trust Company vs. Saxon.

The Court: I believe the gentleman from New Orleans wished to say something.

Mr. Merrigan: May it please the Court, just for the record and contrary to what counsel stated, I have made [12] what I consider to be a very substantial opposition to the motion to intervene. Mr. Monroe represents a party not before the Court at this time and I have no objection to the Court hearing what he would like to say with the understanding that he is not yet a party.

Our position, Your Honor, is that the real party in interest here is the Whitney National Bank of New Orleans and they are seeking to intervene through the bank that's been established or proposed to be established.

The Court: If this is an informal hearing, I will hear anybody.

Mr. Merrigan: All right, Your Honor.

Mr. Monroe: Your Honor, my name is Malcolm Monroe from New Orleans. I am attorney for the Whitney National Bank of New Orleans, Whitney holding corporation, Whitney Bank in Jefferson Parish. There is no attempt to hide that particular fact.

We feel we are the real party in interest. This is a suit to keep the Whitney Bank in Jefferson Parish, a brand new corporation which is already organized, has held its organization meetings, has its money deposited, has been completed for over a month, and is ready to do business and has so advised the Comptroller. The only thing remaining for it to do business is certificate to issue for its

[13] commencement of business which is the last step in a long procedure.

The Court: When had you planned to open and commence business?

Mr. Monroe: About a week and a half ago. Let me explain what the issue is in this case, Judge. We have a legislature that is in session now. Let me say, first, that we have been under a stay, a consent stay that was obtained under the circumstances that have been outlined to you. We are under a temporary restraining order and they are urging you now, just like the Delaware Court said, to extend the hearing on motion for preliminary injunction. It is, in our opinion, simply the ground that the plaintiffs are after in this suit. All they are asking you to do is hold us up and I will explain to you exactly why.

The great allegation of facts, we do not deny that we are a separate corporation and that we are part of a holding company system. All of the allegations of the plaintiff have already been made before the Comptroller the past year. There is no allegation, again, that hasn't been made before the Federal Reserve. There is no allegation that wasn't made before Congress. Each one of those different agencies have refused to accept those allegations.

These plaintiffs are now before the Fed., where [14] their relief is. They propose to appeal from that. They are asking this Court to interject itself into the administrative and legal and appeal remedies that are set up in the Federal Act and they are asking to do that in order that they will affect that case but principally these plaintiffs are here asking this to be delayed because these plaintiffs are urging the Louisiana Legislature, which is now in session, these plaintiffs have a bill before the legislature now in session, it is now considering it. My information is it is considering today, a bill not only affecting holding companies in the State of Louisiana, but they have introduced an amendment in a normally standard bill which would apply retroactively to the Whitney Bank in Jefferson Parish so that it would keep it from opening its doors for business, even though it was legally qualified to do so. That is the issue before this Court. Whether they can persuade a Court a thousand miles away from the scene of this real battle, which is now a political battle, to hold up proceedings that have been going on for a year

and a half of which they have had full notice, for a year and a half, since last October, the proceedings have been going on for a year and a half. They have had full notice since last October. They have not exercised their rights up to this eleventh hour.

We point out that under the rules of this Court we [15] are under a temporary restraining order and for an extension of that, which this is the equivalent of, it ought to be awfully good grounds if we are being hurt.

The Court: Well, here is the—again, I think you all miss the point. They did not request the extension. They haven't asked for an extension. This matter came in to the Court yesterday, together with a number of other motions which this Court had to prepare, also on the same day a request from a Senate Committee that the Court appear there tomorrow morning and testify in regard to a pending bill which the Court feels necessary to do some studying on before it goes up there, and when I got to this file yesterday afternoon, it occurred to me that the matter was so complex and there was such a number of exhibits and so many papers in it that I couldn't possibly read it and be ready to hear this motion and intelligently decide it today. Therefore, at my own suggestion, I tried to get the first date next week that was available for a motion of this length because I am sure it is going to take quite a while to argue and I set it down for the 6th to be heard, which would give the Court the time to examine into this thing and have some knowledge of what it is about before it tries to decide it.

Mr. Monroe: Well, Your Honor, we are not for a moment suggesting that you decide the complicated issues that [16] are here. The suit is for a declaratory judgment and the suit is for a stay, from a temporary to a permanent stay. Now we are saying that the only thing that we are complaining of—we are perfectly willing to stay in court and give the Court all the opportunity in the world to consider the real issues in this case and if the Court finally concludes that what we are doing is illegal, the Court has jurisdiction over us and can stop us, but there is no—we are going to be damaged severely if the Court exercises the exemplary remedy of issuing an injunction. There is no reason why this can't be set up on the merits and that—

The Court: Well, now you are talking about a preliminary restraining order.

Mr. Monroe: That's right.

The Court: Which would be heard next Friday. Also your motion to intervene, which wasn't ready for hearing today, it will also be set down for next Friday and both motions will be disposed of at one time. The granting of a preliminary restraining order in this case, or not, is going to be a very serious matter for all concerned, and it is a matter, certainly, that should not be entered into lightly.

Mr. Monroe: Well, Your Honor, we don't believe it has a great deal of bearing whether they get the restraining order, only a bearing on whether it holds us up with relation [17] to the Louisiana Legislature which is now in session and with relation to the Federal appeal procedures, we feel that the effect of delaying this is having its relationship to the Court that they are normally in, that they have injected this Court into another proceeding and they are asking this Court to interfere with the procedures in there where they are entitled and have already appeared and were denied, and in the record is the Federal ruling denying them a rehearing. They have had plenty of opportunity to go that route and what we are saying to Your Honor—

The Court: Well, are you going to be greatly prejudiced if this matter is put off until next Friday?

Mr. Monroe: We cannot answer, we cannot anticipate the Louisiana Legislature, Your Honor.

The Court: Well heavens knows I can't.

Mr. Merrigan: Well, I think counsel might—

The Court: I don't quite understand what the Louisiana Legislature business is all about.

Mr. Monroe: Because the position of the plaintiff inevitably depends—his whole position depends on what the Louisiana law is. These plaintiffs are trying to change Louisiana law.

The Court: Well, how could what I do here have anything to do with what the Louisiana Legislature does?

[18] Mr. Monroe: The legislature is passing a statute—has before it a statute—not passing it—we trust they won't pass it—but has before it a statute which says that if the bank in Jefferson Parish has not opened its doors for business, it cannot thereafter open.

The Court: Oh, I thought it was retroactive so that even if you did open you would have to close.

Mr. Monroe: I don't think they'd go that far and if they did, we would certainly be delighted to take that on as a legal argument, but we do not want, just because this Court is delayed by lengthy proceedings, to be additionally prejudiced by being faced with the argument that you were not open, the reason you didn't open was the Court up here kept you from opening while it had an opportunity to consider the papers, which is perfectly reasonable. I understand that. Don't mistake me but just saying we are being put in a very, very awkward position if they pass that statute which says you were not open, the statute says if you haven't opened, you can't open and therefore it's a constitutional statute. Now, if we are open and the statute says you've got to close, then we are in a different position.

We, for a year, have been operating under present Louisiana law. We are now faced with not being able to operate under present Louisiana law because of the proceedings [19] in this Court.

We don't believe that this Court should exercise its discretion on the basis of these pleadings to issue the harsh relief particularly when we say to this Court that they cannot be prejudiced. They cannot possibly be prejudiced. We will agree with this Court that when it hears the case and if the declaratory judgment in this case is against us, we will agree that we will have to abide by that declaratory judgment when it becomes final after appeal, and so forth, but we will not urge—the only ground they can have for a preliminary injunction is that they would be prejudiced if it was not issued.

I submit they have not stated that they can possibly be prejudiced and we will, and we believe the burden is on them to show that they will be prejudiced. We have put in our brief that we will stipulate with this Court that we are before you and—

The Court: Well, they have got to show irreparable injury.

Mr. Monroe: I don't think they have, Your Honor.

The Court: Well, and I don't know.

Mr. Monroe: Well, we are in a difficult position. We have been up here since—we have been up here since a week ago

Monday asking to get into this case and in every way [20] we have been objected to. The objection that was finally filed was filed on Tuesday, which I understand was seven full days after we filed our motion to get in.

The Court: Well, let me see something else. Mrs. Davis, could this possibly be heard on the second?

The Deputy Clerk: No, Your Honor, Judge Holtzoff won't even be here.

(The Court conferred with the Deputy Clerk.)

Mr. Merrigan: Your Honor, may I be heard? It is an informal proceeding but the wisdom of not hearing parties not a party to the case yet and bringing in a lot of issues which really cloud the issues, the real facts of the case between the plaintiff and the official of the United States Government have been very amply demonstrated here. I am always impressed with the wisdom of the law which prevents these things until the party is actually in the case, and, certainly, from what has been said here today would certainly indicate that that is a very wise thing, and I have been accused of some influences here today that honestly I never understood as a young lawyer I could possibly have and I'd like to put our position before the Court at this point, if we possibly could.

The Court: Well, I am going to let you put your position before the Court. Just take it easy and be patient.

[21] Mr. Merrigan: All right, Your Honor, thank you.

The Court: Do you have anything further to say?

Mr. Monroe: I don't think so, Your Honor. We hope that you can set the thing, if you cannot pass on it today, as soon as possible, and I just want to say again that I don't think it can be any irreparable injury if we agree to stay before the Court and we do that, but we want to open business for reasons that I have outlined.

The Court: All right. Now what have you all got to say?

Mr. Merrigan: Your Honor, first of all, we are faced with this situation. We have Mr. Monroe representing a party who is not before the Court, saying that he will consent to be bound by anything the Court might do after a trial on the declaratory judgment complaint. I haven't heard that statement from the Comptroller of the Currency, who is our defendant here.

The Court: Well, they don't have to say it. There is

no question about the fact that they are going to be bound by any declaratory judgment the Court issues.

Mr. Merrigan: There has been a long series of cases over the years which say that once a certificate issues from the Comptroller of the Currency no one but the Comptroller, himself, can attack it and that would be true of this case. [22] I don't think anyone can deny it.

The Court: Well, that, then, would mean that we wouldn't issue the declaratory judgment.

Mr. Merrigan: I hope that is what it means because in the first page of the Comptroller's points and authorities on this motion, which was before the Court today, he said plaintiffs have received assurance from the Comptroller's office that no certificate of authority will be issued in this matter until after the Court acts on the pending motion and then he goes on, because of this assurance, no temporary restraining order has been sought.

The facts are that when I was going to come down here to obtain a temporary restraining order, I called Miss Hummer and told her that I intended to come in on Friday afternoon or early Saturday, that I had just completed preparations of the complaint and supporting papers. I received a telephone call from Mr. Hannon in the United States Attorney's office and he said, "Can't we get a voluntary arrangement here whereby the certificate you seek will be held in abeyance until the motion for preliminary injunction is heard and determined?"

I said I would have no objection to that provided the Comptroller of the Currency would agree. Mr. Hannon called from the United States Attorney's office to Mr. Bloom, [23] who is General Counsel to the Comptroller, and without any request on my part basically, they agreed that they would hold the certificate of authority in this matter in their office and not issue it until the Court acted on the motion for preliminary injunction.

Number two: I am accused of going to the Under-Secretary of the Treasury with a Senator. Let me just say, Your Honor, that I called Mr. Bloom and I said, could my people come up from New Orleans and talk to you about this situation. They have had no opportunity to present their side of the case. There are no hearings—

The Court: You don't have to defend yourself against

any accusations of that sort made because I have forgotten them already.

Mr. Merrigan: Well, I hope so, Your Honor, because the fact is that I didn't even ask for such a conference until the—I was advised by Mr. Bloom that we could talk as long as we wanted, we would be wasting our time, the Comptroller had made up his mind and that was that.

I don't want Your Honor to think that we have been in here litigating for a year, as has been indicated here today. The first step that these plaintiffs have taken in these proceedings was when we filed a complaint here. There was no formal statutory hearing before the Federal Reserve [24] Board because the Comptroller told the Board that he consented to the Whitney situation.

The Court: Well, now again, this motion is being argued on its merits and that is not what I am considering. I think, gentlemen, here is the situation:

If this Court tried to hear this motion today, the only thing I could do would be to take it under advisement and study the file and make a decision. I would then have to hear the argument without being able to ask intelligent questions of counsel which might clear up some points, because I would not be familiar with the file. There are Judges who hear motions without reading the file. I am not one of them. Maybe they are a lot smarter than I am. I am not smart enough to do that and particularly in a case this complex. So, if I heard it today you still wouldn't get a decision before next Friday.

Under the circumstances, I regret, gentlemen, but I know nothing else to do but to leave this matter set for hearing on a preliminary injunction and the motion to intervene, next Friday. If the Treasury Department, the Comptroller, will not agree to withhold the issuance of the certificate until that time, then I will today sign a temporary restraining order.

Now, I am sorry but that is all the choice we have [25] in the matter. Now, would you rather I issue a temporary restraining order or would you rather agree to withhold it until next Friday?

Mr. Bloom: Well, Your Honor, I see no point in putting counsel and yourself to the trouble of drawing a paper if I don't have to.

Mr. Merrigan: Papers are drawn.

The Court: Well, it is no problem.

Mr. Bloom: Well, if the papers are drawn, I don't know, you see, because this voluntary situation puts me in a—the Comptroller in a difficult situation.

The Court: Well, if you don't want to be in the voluntary situation, I will relieve you of it.

Mr. Merrigan: May I file the motion for a temporary restraining order with the supporting affidavit?

The Court: Well, let's see what counsel wishes to do. Would you prefer that you not be requested to do it voluntarily but that the Court issue the temporary restraining order?

Mr. Bloom: I think it would be better if the order was issued.

The Court: All right, then let me have the order.

(Mr. Merrigan handed the order to the Court.)

* * * *

Filed June 29, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

DEFENDANT'S RESPONSE TO MOTION OF THE BANK OF
LOUISIANA IN NEW ORLEANS TO INTERVENE AS A PLAINTIFF

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion of the Bank of Louisiana in New Orleans to intervene as a plaintiff in this action.

Said defendant however, reserves the right to make all objections he may have to the granting of relief to any plaintiff herein, including the Bank of Louisiana in New Orleans, at any stage in this litigation, including specifically the right to object to the standing of any plaintiff to sue.

JOSEPH D. GUILFOYLE
Acting Assistant Attorney General.

DONALD B. MACGUINEAS,
DAVID V. SEAMAN,
*Attorneys, Department of Justice
Attorneys for Defendant.*

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed June 29, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

DEFENDANT'S RESPONSE TO MOTION FOR VOLUNTARY DISMISSAL
BY MERCHANTS TRUST AND SAVINGS BANK

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion for voluntary dismissal by plaintiff Merchants Trust and Savings Bank in this action.

JOSEPH D. GUILFOYLE
Acting Assistant Attorney General.

DONALD B. MACGUINEAS,
DAVID V. SEAMAN.
*Attorneys, Department of Justice
Attorneys for Defendant.*

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed July 5, 1962

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared:

LEON M. TRICE, a person of the full age of majority and a resident of the Parish of Orleans, State of Louisiana, who after being by me, Notary, first duly sworn, did depose and say:

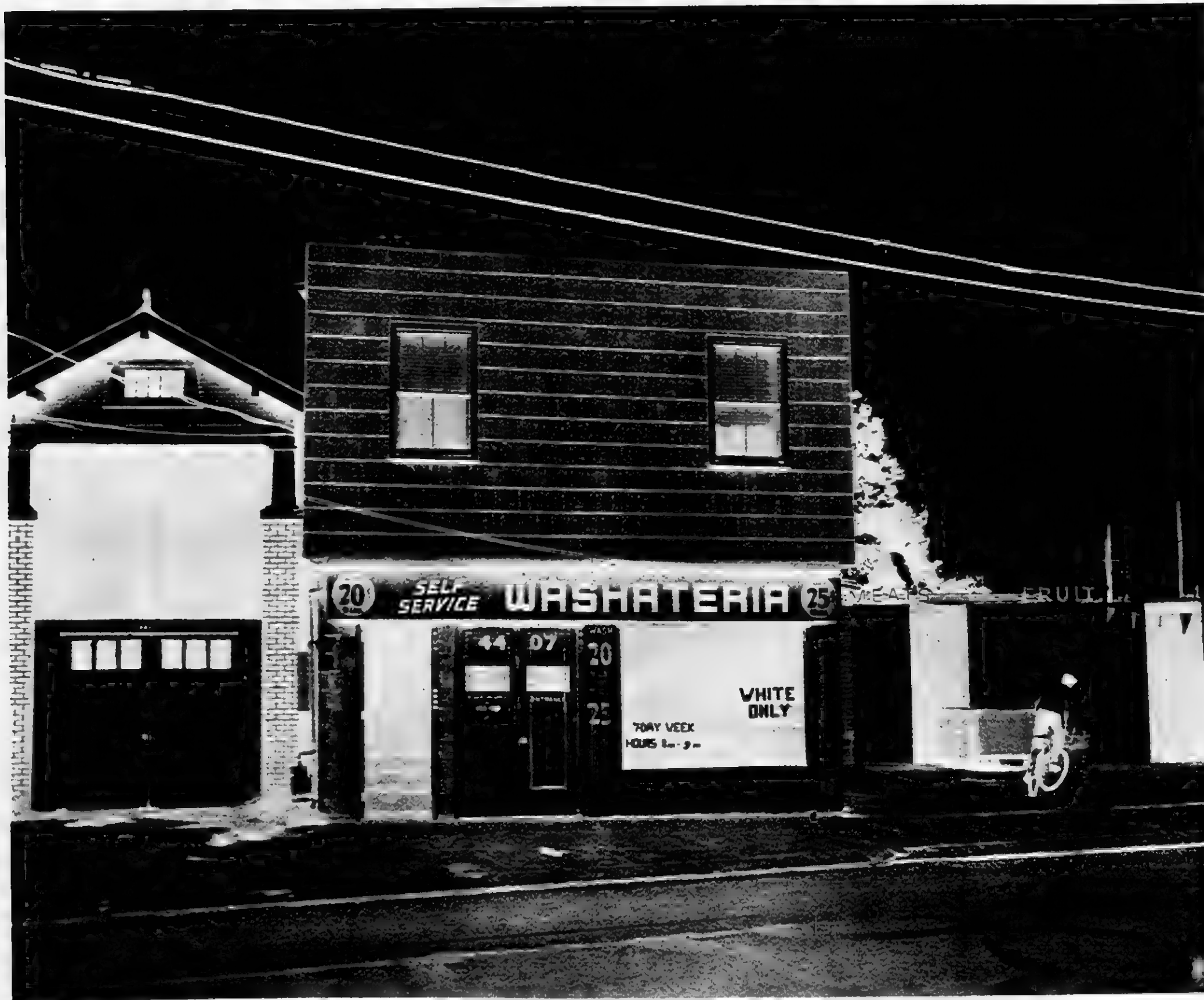
That he is a commercial photographer and has been engaged in business in the City of New Orleans as a commercial photographer for forty years.

That on July 3, 1962 at approximately 12:30 P. M. he personally made the six (6) photographs attached hereto, signed on the reverse thereof by him and marked FB 659-1 through 6, inclusive; that these photographs were taken at or in the vicinity of the intersection of Jefferson Highway and Central Avenue, Jefferson Parish, Louisiana; that Photograph No. FB 659-4 is a true and accurate photograph taken on the date aforesaid of the premises bearing Municipal No. 4407 Jefferson Highway, Jefferson Parish, Louisiana; Photograph No. FB 659-3 is a true and accurate photograph taken on the date aforesaid of the premises 4407 Jefferson Highway, showing the property adjacent to 4407 Jefferson Highway, and depicts all of the property from the intersection to approximately 200 feet therefrom on the North side of Jefferson Highway; Photograph No. FB 659-1 is a true and accurate photograph taken on the date aforesaid of the premises directly across Jefferson Highway from and opposite to the premises 4407 Jefferson Highway; Photograph FB 659-2 is a true and accurate photograph taken on the date aforesaid of the area from the intersection of Jefferson Highway and Central Avenue and depicts all of the property from the intersection to approximately 400 feet therefrom on the South side of Jefferson Highway and is that side of Jefferson Highway opposite from the premises 4407 Jefferson Highway; Photograph FB 659-6 is a true and accurate photograph taken on the date aforesaid of the area directly opposite from the premises 4407 Jefferson Highway and across said highway.

LEON M. TRICE.

Sworn to and subscribed before me this 3rd day of July, 1962.

[Copy Illegible],
Notary Public



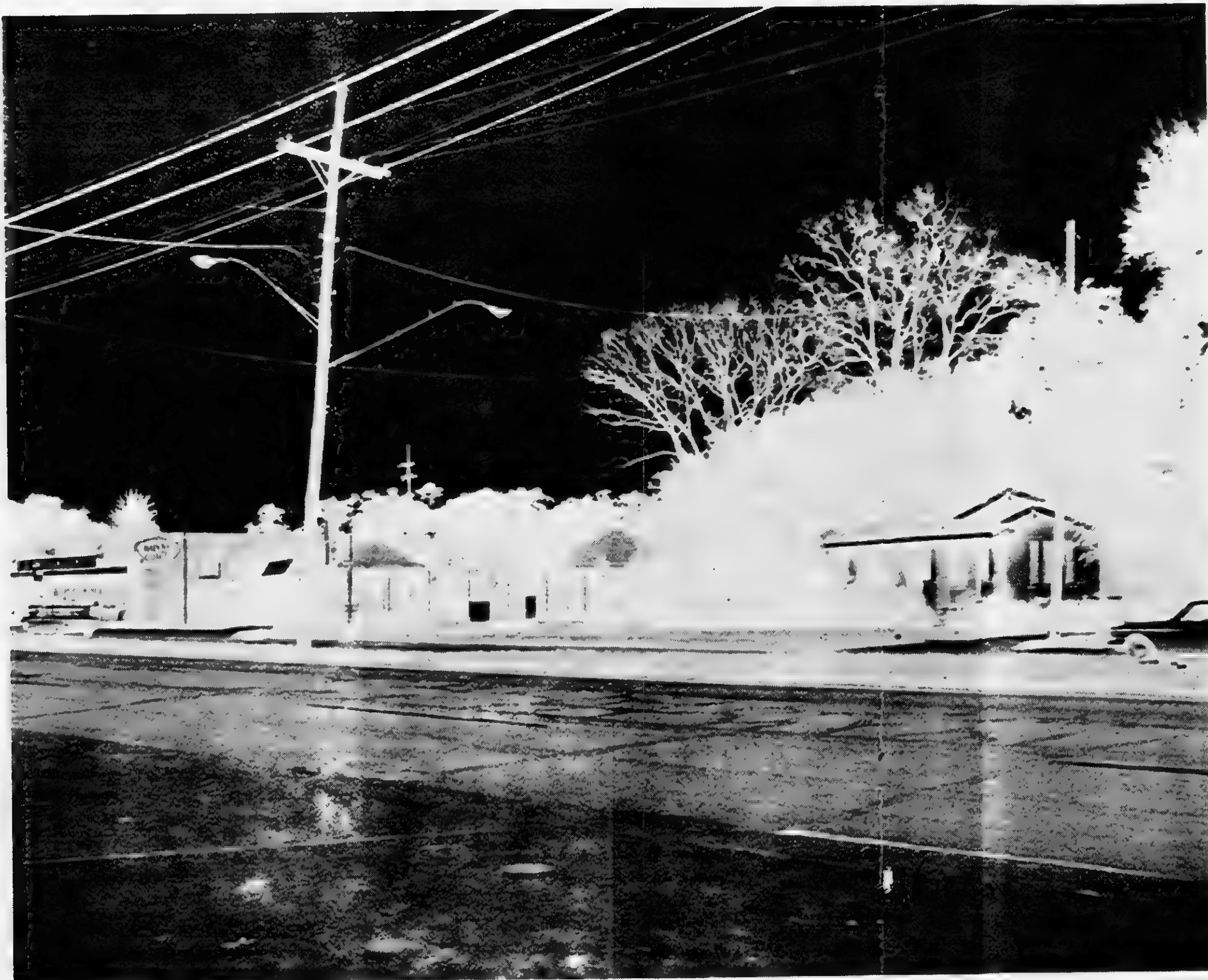
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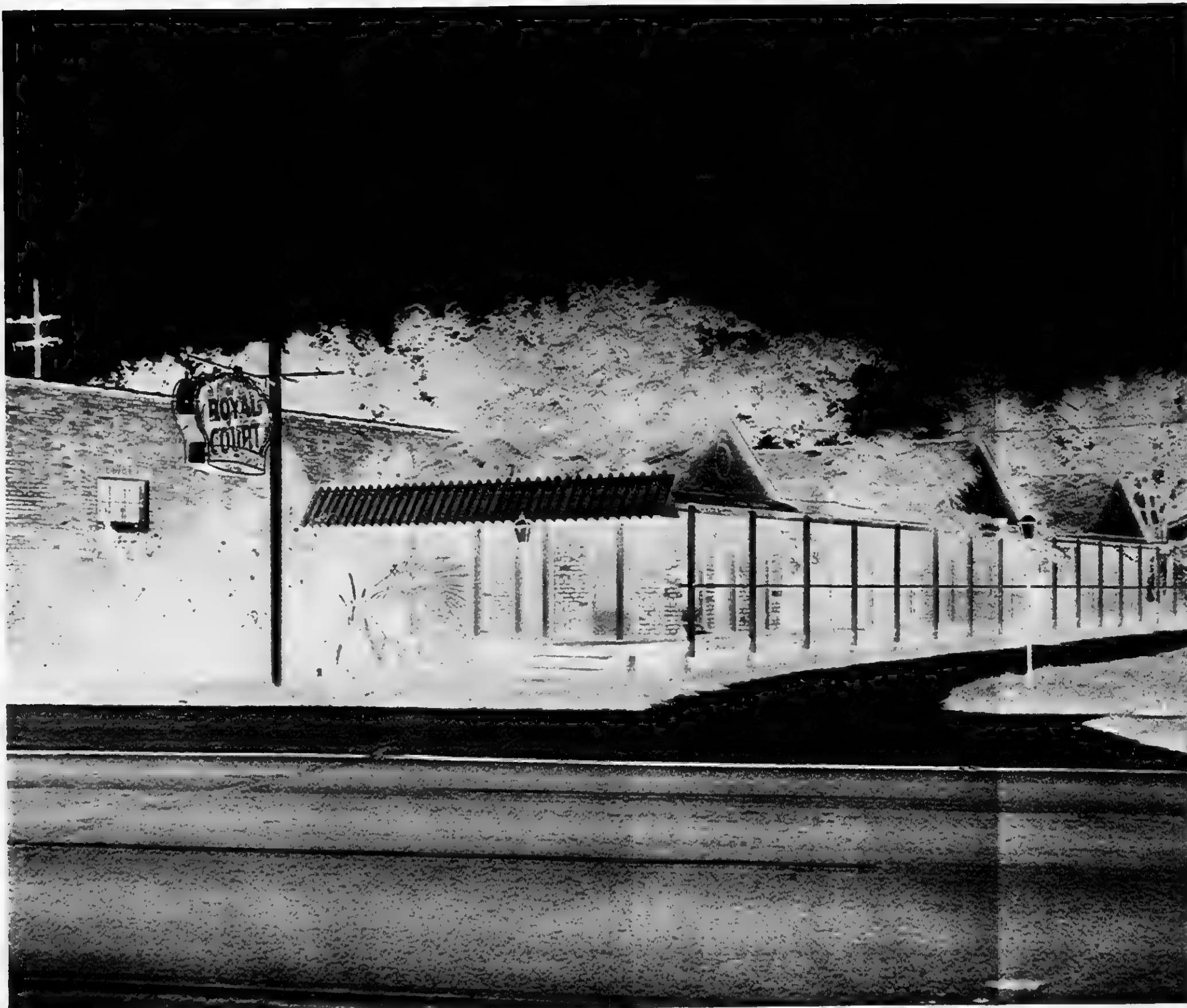
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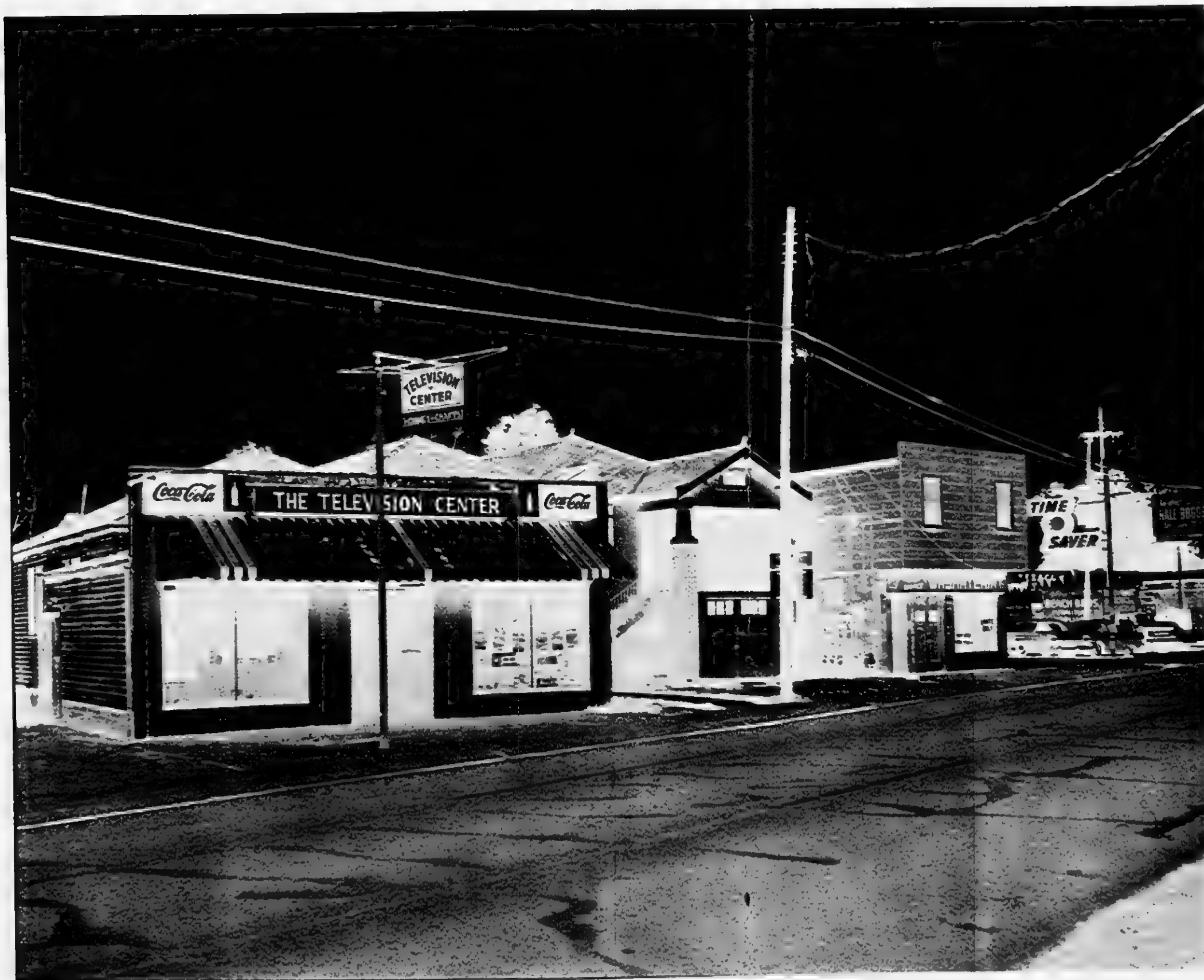
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Filed July 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFF, BANK OF NEW ORLEANS
AND TRUST COMPANY

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came
and appeared:

JACQUES A. LIVAUDAIS, a person of the full age of majority and a resident of the Parish of Orleans, who after being by me, Notary, first duly sworn, did depose and say:

That he is the Executive Vice-President of the plaintiff, the Bank of New Orleans and Trust Company, and he submits this affidavit in support of the pending motion for preliminary injunction in the above entitled cause:

That he understands that it has been asserted in this action that plaintiff, the Bank of New Orleans and Trust Company, would suffer no damage to its business, its properties or its profits if the defendant, Comptroller of the Currency, issued a certificate to the Whitney National Bank of New Orleans to establish banking facilities in Jefferson Parish, Louisiana. Affiant states that such assertions are untrue and incorrect for the following reasons:

Plaintiff, the Bank of New Orleans and Trust Company, maintains its principal offices and banking branches entirely within the Parish of Orleans, State of Louisiana, and is restricted by State law from establishing banking facilities in Jefferson Parish or any other Parish in the State of Louisiana. Notwithstanding the fact that this plaintiff's banking facilities are limited to the Parish of Orleans, a very large number of the plaintiff's customers, depositors and borrowers reside in and are principally located in

Jefferson Parish, Louisiana. Affiant has reviewed the ledgers of the Bank of New Orleans and Trust Company and:

1. As of June 21, 1962 the total amount of checking accounts of depositors who reside in or whose businesses are located in Jefferson Parish amounted to approximately \$2,029,000.00, and represented deposits by 2812 individuals and businesses and accounted for approximately 12.3% of the total checking account deposits of customers on that date. In addition to checking accounts the Bank serves a very large number of individuals and businesses who reside in or are located in Jefferson Parish and who maintain savings and other type deposits with it.

2. As of June 2, 1962 the total amount of commercial loans to persons residing in or businesses located in Jefferson Parish exceeding \$10,000.00 amounted to approximately \$3,410,000.00 and accounted for approximately 15% of the total amount of commercial loans exceeding \$10,000.00 of all customers of the Bank on that date. The foregoing figures are limited to commercial loans exceeding \$10,000.00. In addition thereto the Bank has outstanding a large volume of commercial loans to persons residing in or businesses located in Jefferson Parish in amounts less than \$10,000.00 as well as loans of all other types.

In fact a substantial number of the largest depositors and borrowers of the Bank are residents of and are businesses located in Jefferson Parish.

Accordingly, should the Comptroller of the Currency authorize the Whitney National Bank of New Orleans, the largest bank in the State, with combined resources of almost one-half billion dollars, to open branch banking facilities through one device or another in Jefferson Parish, plaintiff would necessarily suffer severe loss of loans, deposits and other business and would sustain damage to its business and profits exceeding \$50,000.00 per year. Additionally, if the Comptroller is permitted to issue the certificate of authority, as he proposes to do unless enjoined, this plaintiff would have no adequate remedy at law and would be unable to defend itself against the diversion to

and appropriation by said Whitney National Bank of a substantial part of the banking business and services now enjoyed by the Bank of New Orleans and Trust Company.

JACQUES A. LIVAUDAIS.

Sworn to and subscribed before me on this 3rd day of July, 1962.

[Copy Illegible],
Notary Public

Filed July 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER GRANTING MOTION OF THE BANK OF LOUISIANA IN
NEW ORLEANS TO INTERVENE AS A PLAINTIFF

Upon consideration of the Motion of The Bank of Louisiana in New Orleans for leave to intervene as a plaintiff in this action and to join with the other plaintiffs herein, in seeking the relief prayed for in the Complaint herein, and the defendant having advised the Court by written response to the motion that he has no objection to the granting of said motion, it is by the Court this 5th day of July, 1962

Ordered, that the said motion of The Bank of Louisiana in New Orleans for leave to intervene as a plaintiff in this action and to join with the other plaintiffs herein in seeking the relief prayed for in the Complaint herein be and the same hereby is granted, and The Bank of Louisiana in New Orleans be and the same hereby is admitted by the Court as a party plaintiff to this action.

[Copy illegible],

Judge,
United States District Court
for the District of Columbia.

Filed July 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION

CITY OF WASHINGTON,

District of Columbia, ss:

Edward L. Merrigan, being duly sworn, deposes and
says:

I am the attorney for plaintiffs herein.

Filed herewith is a copy of House Bill No. 1221 of the
1962 Louisiana Legislature, "To prohibit the formation of
new bank holding companies and to control expansion of
existing bank holding companies and of their subsidiaries."

This Bill was passed by the Louisiana House of Repre-
sentatives, with the amendments shown, on June 27, 1962,
by a vote of 80 to 16. It was, I am advised, passed without
change of the House version, by the Louisiana Senate on
July 4, 1962 by a vote of 28 to 7. I am advised that the
legislation was supported by the Administration of the
State of Louisiana and by the State Banking Commissioner
of Louisiana, and is expected to be signed into law by the
Governor without substantial delay.

EDWARD L. MERRIGAN.

Sworn to and subscribed before me this 5th day of July,
1962.

[Illegible]

Notary Public.

My Commission Expires May 15, 1966.

1 HOUSE BILL NO. 1221

2 By Mr. Angelle (By Request)

3 AN ACT

4 To define the bank holding company, to prohibit the forma-
5 tion of new bank holding companies, and to control the
6 future expansion of existing bank holding companies and
7 of their subsidiaries.

8 Be it enacted by the Legislature of Louisiana:
~~SECTION 1. DECLARATION OF POLICY.~~ Section 1. Declaration of Policy.

9 It is declared to be the policy of this State to protect
10 and to foster the growth of the independent unit bank, and
11 institution whose ownership and origins are grounded in the
12 local community and whose activities are bound up with
13 local economic and social organizations; to prevent the un-
14 desirable concentration of control in the banking field to the
15 detriment of the public interest; to insure effective competi-
16 tion among all banking institutions; and, to accomplish these
17 objectives by prohibiting the formation of new banking
18 holding companies and the acquisition of control by what-
19 ever means of additional banking institutions by existing
20 bank holding companies and by their subsidiaries.

21 Section 2. Definitions.
~~SECTION 2. DEFINITIONS.~~

22 (a) "Bank holding company" means any company, foreign or domestic,
23 including a bank, (1) which directly or indirectly owns, con-
24 trols, or holds with power to vote, ²⁵ ~~XX~~ per centum or more
25 of the voting shares of any bank, or (2) which controls in
26 any manner the election of a majority of the directors of
27 any bank, or (3) for the benefit of whose shareholders or
28 members ²⁵ ~~XX~~ per centum or more of the voting shares of
29 any bank or a bank holding company is held by trustees;
30 and for the purposes of this Act, any successor to any such
31 company shall be deemed to be a bank holding company
32 from the date as of which such predecessor company became

(3) nor shall this act apply to shares which are held or acquired by a bank holding company which is a bank or by any banking subsidiary of a bank holding company, in good faith in a fiduciary capacity; except where such shares are held for the benefit of the shareholders of such bank holding company or any of its subsidiaries, or to shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes; or to shares lawfully acquired and owned prior to the date of enactment of this Act by a bank, which is a bank holding company, or by any of its wholly owned subsidiaries.

(b) "Company" means any corporation, business trust, partnership, ~~joint venture~~ association, or similar organization doing business in this State, but shall not include ~~XX~~ any corporation the majority of the shares of which are owned by the United States or by any State, ~~XXXXXX XXXX corporation~~ ~~firm~~ ~~not for profit~~ ~~charitable~~ ~~fund~~ ~~or~~ ~~foundation~~ ~~organization~~ ~~and~~ ~~not~~ ~~operated~~ ~~exclusively~~ ~~for~~ ~~religious~~ ~~charitable~~ ~~or~~ ~~other~~ ~~educational~~ ~~purposes~~ ~~or~~ ~~for~~ ~~the~~ ~~promotion~~ ~~of~~ ~~the~~ ~~arts~~ ~~and~~ ~~sciences~~ ~~and~~ ~~which~~ ~~in~~ ~~its~~ ~~operation~~ ~~derives~~ ~~its~~ ~~primary~~ ~~purpose~~ ~~and~~ ~~substantial~~ ~~part~~ ~~of~~ ~~its~~ ~~activities~~ ~~and~~ ~~which~~ ~~is~~ ~~not~~ ~~organized~~ ~~for~~ ~~other~~ ~~purposes~~ ~~not~~ ~~permitted~~ ~~by~~ ~~the~~ ~~Internal~~ ~~Revenue~~ ~~Code~~ ~~of~~ ~~1954~~ ~~and~~ ~~any~~ ~~regulations~~ ~~thereunder~~ ~~and~~ ~~any~~ ~~other~~ ~~regulations~~ ~~of~~ ~~the~~ ~~Internal~~ ~~Revenue~~ ~~Service~~ ~~of~~ ~~the~~ ~~United~~ ~~States~~ ~~of~~ ~~America~~ ~~and~~ ~~any~~ ~~other~~ ~~regulations~~ ~~of~~ ~~the~~ ~~Internal~~ ~~Revenue~~ ~~Service~~ ~~of~~ ~~the~~ ~~United~~ ~~States~~ ~~of~~ ~~America~~ ~~and~~ ~~any~~ ~~other~~ ~~regulations~~ ~~of~~ ~~the~~ ~~Internal~~ ~~Revenue~~ ~~Service~~ ~~of~~ ~~the~~ ~~United~~ ~~States~~ ~~of~~ ~~America~~ ~~and~~ ~~any~~ ~~other~~ ~~regulations~~ ~~of~~ ~~the~~ ~~Internal~~ ~~Revenue~~ ~~Service~~ ~~of~~ ~~the~~ ~~United~~ ~~States~~ ~~of~~ ~~America~~ ~~and~~ ~~any~~ ~~other~~ ~~regulations~~ ~~of~~ ~~the~~ ~~Internal~~ ~~Revenue~~ ~~Service~~ ~~of~~ ~~the~~ ~~United~~ ~~States~~ ~~of~~ ~~America~~ ~~and~~ ~~any~~ ~~other~~ ~~regulations~~ ~~of~~ ~~the~~ ~~Internal~~ ~~Revenue~~ ~~Service~~ ~~of~~ ~~the~~ ~~United~~ ~~States~~ ~~of~~ ~~America~~ ~~and~~ ~~any~~ ~~other~~ ~~regulations~~ ~~of~~ ~~the~~ ~~Internal~~ ~~Revenue~~ ~~Service~~ ~~of~~ ~~the~~ ~~United~~ 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(d) "Subsidiary," with respect to a specified bank holding company, means (1) any company²⁵ ~~100~~ per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company; or (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding

1 company; or (3) any company ²⁵ ~~15~~ per centum or more of
 2 whose voting shares are held by trustees for the benefit of
 3 the shareholders or members of such bank holding company.

4 (c) The term "successor" shall include any company which
 5 acquires directly or indirectly from a bank holding company
 6 shares of any bank, when and if the relationship between
 7 such company and the bank holding company is such that
 8 the transaction effects no substantial change in the control
 9 of the bank or beneficial ownership of such shares of such
 10 bank.

Section 3. Prohibitions upon Acquisition of Bank Shares or Assets.

11 ~~SECTION 3. PROHIBITIONS UPON ACQUISITIONS OF~~
 12 ~~BANK SHARES OR ASSETS.~~

13 It shall be unlawful (1) for any action to be taken which
 14 results in a company or a bank becoming a bank holding
 15 company as defined in this Act; (2) for any bank holding
 16 company or subsidiary thereof to acquire direct or indirect
 17 ownership or control of any voting shares of any bank if,
 18 after such acquisition, such company or subsidiary will directly
 19 or indirectly own or control more than ²⁵ ~~1~~ per centum of the vot-
 20 ing shares of such bank; (3) for any bank holding company or
 21 subsidiary thereof to acquire all or substantially all of the as-
 22 sets of a bank; or (4) for any bank holding company or sub-
 23 sidiary thereof to merge or consolidate with any other bank
 24 holding company or any subsidiary thereof; ^{(5) for any} ~~Notwithstanding~~
 25 the foregoing, this prohibition shall not apply to additional
 26 shares acquired by a bank holding company in a bank in which
 27 such bank holding company owned or controlled a majority
 28 of the voting shares prior to such acquisition.

Section 4. Penalties.

29 ~~SECTION 4. PENALTIES.~~

30 Any bank, bank holding company, company, or any subsid-
 31 iary of any of them, which willfully violates any provision
 32 of this Act, or any regulation or order issued by the State

bank holding company or
 subsidiary thereof to open
 for business any bank not
 now opened for business,
 whether or not, a charter
 permit, license or
 certificate to open for
 business has already been
 issued.

1 Bank Commissioner pursuant thereto, shall upon conviction
2 be fined not less than \$500 nor more than \$1,000 for each
3 day during which the violation continues. Any individual
4 who willfully participates in a violation of any provision
5 of this Act shall upon conviction be fined not less than
6 \$1,000 nor more than \$5,000 or imprisoned not more than
7 one year, or both.

Section 5. Administration.

8 ~~SECTION 5. ADMINISTRATION.~~

9 The State Bank Commissioner shall administer and carry
10 out the provisions of this Act and may issue such regulations
11 and orders as may be necessary to discharge this duty and
12 to prevent evasions of the Act.

Section 6. Savings Clause.

13 ~~SECTION 6. SAVINGS CLAUSE.~~

14 Nothing herein contained shall be interpreted or con-
15 strued as approving any act, action, or conduct which
16 is or has been or may be in violation of any existing law,
17 nor shall anything herein contained constitute a defense
18 to any action, suit or proceeding pending or hereafter in-
19 stituted on account of any prohibited antitrust or mono-
20 polistic act, action, or conduct.

Section 7. Severability.

21 ~~SECTION 7. SEVERABILITY.~~

22 If any provision of this Act or the application of such
23 provision to any person or circumstance, shall be held in-
24 valid, the remainder of the Act, and the application of
25 such provision to persons or circumstances other than those
26 to which it is held invalid, shall not be affected thereby.

Section 8. Repeal.

All laws or parts of laws in conflict herewith
are hereby repealed.

208

Filed July 6, 1962

[Title omitted]

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared:

JOSEPH MERRICK JONES of the full age of majority, who after being first duly sworn did depose and say:

That he is the senior partner in the law firm of Jones, Walker, Waechter, Poitevent, Carrere & Denegre, which firm through its partners and associates is engaged in the practice of law in the City of New Orleans.

That he submits this affidavit because of the improper, misleading and impertinent inferences made by James J. Gilly, Executive Vice-President of the Whitney National Bank of New Orleans, in his "Affidavit in support of Defendant," and the statement contained in Paragraph 7 of the "Third Defense" of the answer of the applicant to intervene, Whitney National Bank of Jefferson Parish, filed in these proceedings entitled "Bank of New Orleans and Trust Company et al vs. James J. Saxon, Comptroller of the Currency," No. 1837-62 of the docket of the United States District Court for the District of Columbia.

That the only client represented by this firm or any of its members in the aforesaid proceedings, either directly or indirectly, is plaintiff, the Bank of New Orleans and Trust Company, on whose behalf this firm has instituted the aforesaid proceedings solely and exclusively to protect the valuable property rights of said Bank, which would be irreparably damaged if the Whitney National Bank of New Orleans is permitted by the Comptroller of the Currency to establish banking facilities in Jefferson Parish, Louisiana.

This law firm has represented the Bank of New Orleans and Trust Company since its organization in 1946 and has also for many years represented The National Bank of Commerce in New Orleans in many of its legal matters. Affiant advised the National Bank of Commerce in New Orleans of his firm's proposed representation of the Bank

of New Orleans and Trust Company in this proceeding and was told that said Bank had no objection to his undertaking this representation. Any insinuations by the officials of the Whitney National Bank of New Orleans that the aforesaid law firm is representing the National Bank of Commerce in New Orleans in these proceedings are improper and false.

JOSEPH MERRICK JONES.

Sworn to and Subscribed before me this 3rd day of July, 1962.

JOHN J. WEIGEL,
Notary Public.

Filed July 6, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER

Upon consideration of the motion for voluntary dismissal by the plaintiff Merchants Trust and Savings Bank, and it appearing that the defendant Comptroller of the Currency has indicated no objection to the granting of this motion, and for good cause shown, it is hereby

Ordered that said motion be and the same hereby is granted and the Merchants Trust and Savings Bank is hereby dismissed as a plaintiff from this action.

Done this 6 day of July, 1962.

ALEXANDER HOLTZOFF,
United States District Judge

Filed July 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ANSWER OF INTERVENING DEFENDANT TO PLAINTIFFS' COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE ORDER

Whitney National Bank in Jefferson Parish, the intervening defendant, answers the plaintiffs' complaint as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

(1) It is admitted that plaintiff, Bank of New Orleans and Trust Company, is a banking corporation duly organized and existing under and pursuant to the laws of the State of Louisiana and that it maintains its principal office and banking branches entirely within the City of New Orleans, State of Louisiana. The allegations contained in Paragraph 1 are otherwise denied.

(2) It is admitted that plaintiff, Merchants Trust and Savings Bank, is a banking corporation duly organized and existing under and pursuant to the laws of the State of Louisiana and that it maintains its banking offices and facilities entirely on the East Bank of the Mississippi River in the Parish of Jefferson, State of Louisiana. The allegations contained in Paragraph 2 are otherwise denied.

(3) It is admitted that plaintiff, Guaranty Bank and Trust Company, of Lafayette, Louisiana, is a banking corporation organized and existing under and pursuant to the laws of the State of Louisiana and maintains its banking offices and facilities in Lafayette Parish, State of Louisiana. The allegations contained in Paragraph 3 are otherwise denied.

(4) The allegations contained in Paragraph 4 are admitted.

(5) The allegations contained in Paragraph 5 are denied,

except to admit the existence of the statutory provisions referred to therein. Intervening defendant specially avers that the matters herein sued upon insofar as they involve the Comptroller of Currency are strictly within an area committed to his sole and uncontrolled discretion and are not subject to judicial review.

(6) It is admitted that plaintiffs are all engaged in the banking business of the State of Louisiana. The allegations contained in Paragraph 6 are otherwise denied. It is specially averred that Section 36 of Title 12 of the United States Code has no application whatsoever to the matters herein sued upon, and that what is actually involved, namely action by the Comptroller of Currency pursuant to Section 27 of said title, is and would be within an area of discretion committed to said office exclusively, and not subject to judicial review.

(7) The allegations of the first sentence of Paragraph 7 are admitted. The allegations of the second sentence deal in relative terms and if called upon to admit or deny the said allegation, intervening defendant denies same for lack of sufficient information to justify a belief. Intervening defendant admits that as of June 30, 1961, it held approximately 39% of the total deposits in all banks in the Parish of Orleans, State of Louisiana, and 44% of all deposits of individuals, partnerships and corporations, but the remaining allegations of the third sentence of the first paragraph of Paragraph 7 are relative terms, and if called upon to admit or deny said allegations, intervening defendant denies same for lack of sufficient information to justify a belief.

(8) The allegations contained in Paragraph 8 are denied, except to admit the existence of Title 12, United States Code Sections 27 and 36, and intervening defendant specially avers that Section 36 has no application whatsoever to the matters herein sued upon. Intervening defendant further avers that insofar as Section 27 may be concerned, any action of the Comptroller of the Currency pursuant thereto is in an area committed to the sole discretion of said officer, and is not subject to judicial review.

(9) Intervening defendant admits the existence of Louisiana Revised Statutes 6:54, 328, which are applicable to banks organized under the laws of the State of Louisiana. Intervening defendant otherwise denies the allegations of Paragraph 9 and avers that said statutory provisions have

no application whatsoever to the matters herein sued upon.

(10) Intervening defendant is informed and believes that the officers of Whitney National Bank of New Orleans have at least some familiarity with the National Banking Act and the laws of Louisiana pertaining to banks, as a general proposition. Intervening defendant is not in a position to admit or otherwise deny the allegation with respect to the Comptroller of the Currency. The allegations contained in Paragraph 10 are otherwise denied.

(11) The allegations contained in Paragraph 11 are denied.

(12) Intervening defendant denies the allegations of Paragraph 12 except to admit that Whitney National Bank of New Orleans, Crescent City National Bank, and Whitney Holding Company participated in a reorganization program, all of the phases of which received the required approvals of the appropriate regulatory authorities. In addition, intervening defendant avers that Crescent City National Bank was properly organized and received due approval of and a certificate of authority to commence business from the Comptroller of Currency, which action on the part of the Comptroller of Currency was in an area committed to the sole discretion of that office, and is not subject to judicial review. Intervening defendant avers also that the matters alleged in Paragraph 12 have no bearing whatsoever on the cause of action herein sued upon.

(13) The allegations of Paragraph 13 are denied, and it is specially averred that Title 12, United States Code, Section 1845 has no relevancy whatsoever to the matters herein sued upon.

(14) The allegations of Paragraph 14 are denied.

(15) The allegations of Paragraph 15 are denied, except to admit that all due approvals were obtained with respect to the organization of Crescent City National Bank, and that the approval of the Comptroller of Currency contemplated some action on the part of the Federal Reserve System, the approval of which body was ultimately obtained.

(16) The allegations of Paragraph 16 are admitted, and intervening defendant specially avers that the Federal Reserve Board gave notice of said application to the public as required by law.

(17) It is admitted that the Comptroller of Currency notified the Federal Reserve System recommending approval of the acquisition by Whitney Holding Company of the stock

of Whitney National Bank of New Orleans and that of the intervening defendant. The remaining allegations of Paragraph 17 are denied, and intervening defendant specially avers that the Board of Governors of the Federal Reserve System did not "forego the holding of a formal, statutory hearing on the application", as is averred by plaintiff, but, to the contrary, held a formal hearing after due legal notice and following press releases, including releases in newspapers of general circulation in the City of New Orleans, all of which were available to plaintiffs and contained the date of the hearing as scheduled and ultimately held on January 17, 1962. The fact of the holding of such hearing was well known to plaintiffs despite their allegations to the contrary, in view of the quotation from the transcript of said hearing as appears in Paragraph 17 of plaintiffs' complaint.

(18) The allegations of the first sentence of Paragraph 18 are denied, except to admit that the Federal Reserve System on May 3, 1962, did issue an order, copy of which is attached hereto as Exhibit A. Intervening defendant specially denies that said approval in any way involved the approval of the establishment of a "new branch in Jefferson Parish, Louisiana".

Intervening defendant denies the remaining allegations of Paragraph 18 for lack of sufficient information to justify a belief.

(19) It is admitted that defendant, The Comptroller of Currency, on May 18, 1962, confirmed his formal approval of the consolidation of Whitney National Bank of New Orleans and Crescent City National Bank, which became effective on May 24, 1962, and that a certificate of authority to do business as a national bank was issued to Crescent City National Bank as of May 24, 1962. The allegations of Paragraph 19 are otherwise denied. Intervening defendant specially avers that it is a duly organized banking institution under the national banking laws, that it has complied with law in all respects, and has been recognized by the Comptroller of Currency and that it is presently awaiting the issuance of a formal certificate of authority from the Comptroller of Currency in order that it might commence business in the Parish of Jefferson, State of Louisiana. Intervening defendant is not itself a branch bank or branch facility, and there is no pending application of intervening defendant or of Whitney National Bank of New Orleans to

establish a branch bank in the Parish of Jefferson, State of Louisiana. Intervening defendant is informed and believes that Whitney Holding Corporation, a corporation duly organized under the laws of the State of Louisiana and subject to regulation under 12 U.S.C. Sections 1841-1848, has no intention of establishing or attempting to establish or of applying for authority to establish a "branch bank" or "branch banking facilities" in the Parish of Jefferson, State of Louisiana, inasmuch as said corporation is not a "bank" or "banking institution".

(20) The allegations contained in Paragraph 20 are denied.

(21) It is admitted that the figures recited in Paragraph 21 are substantially correct. The allegations of said paragraph are otherwise denied.

Third Defense

(1) All action taken by intervening defendant, Whitney National Bank of New Orleans, Crescent City National Bank, and Whitney Holding Company, in connection with the matters herein sued upon and matters relating thereto has been taken openly and with full disclosure of all relevant facts and without subterfuge of any kind.

(2) The organization of the intervening defendant in no way circumvents, and its commencement of the business of banking in Jefferson Parish, Louisiana, would in no way circumvent the provisions and purposes of the National Banking Act, but are entirely consistent therewith and authorized thereby. The purpose of the organization of the intervening defendant was to furnish Jefferson Parish the additional local banking facilities urgently needed and sought by those residing and doing business in said Parish, as well as to give Whitney Holding Corporation and its stockholders an opportunity to share in the potential growth offered to banks serving said Parish.

(3) The banking facilities to be established by intervening defendant will not in any way or for any purposes constitute a "branch" or "branch facility" of either Whitney National Bank of New Orleans or Whitney Holding Corporation, but intervening defendant is a legal entity separate and distinct from Whitney National Bank of New Orleans and Whitney Holding Corporation.

(4) The issuance to intervening defendant by defendant,

Comptroller of Currency, of a certificate of authority to commence the business of banking will be in accordance with the applicable provisions of the National Bank Act (12 U.S.C. 21-27) and will be within the authority and discretion vested thereby in said defendant.

(5) Plaintiff, Guaranty Bank and Trust Company, is located in and serves a community many miles from the metropolitan area of New Orleans and in no way served by banks in Jefferson Parish.

(6) Plaintiff, Merchants Trust and Savings Bank, operates in Jefferson Parish, but is controlled by Louis J. Roussel who also controls National American Bank in New Orleans, a competitor of Whitney National Bank of New Orleans.

(7) The Bank of New Orleans and Trust Company does not operate in Jefferson Parish at all, and is already faced with competition in Jefferson Parish in the form of plaintiff, Merchants Trust and Savings Bank, as commonly controlled with the National American Bank in New Orleans, and also from National Bank of Commerce in Jefferson Parish, an established affiliate of the National Bank of Commerce in New Orleans. The attorneys appearing in this proceeding on behalf of plaintiff, Bank of New Orleans and Trust Company, are also attorneys for National Bank of Commerce in New Orleans.

(7) In good faith and in compliance with all applicable laws, and with notice to all parties and after public investigation and hearings, intervening defendant has been organized with great effort and great expense. Intervenor's charter has been issued and intervenor is completely legally organized. The following further steps have been taken by intervenor:

- (a) It has elected its directors and officers.
- (b) It has designated a full complement of clerks and tellers ready to commence work.
- (c) It has purchased premises and commenced construction.
- (d) It has leased temporary quarters.
- (e) It has subscribed and paid for Federal Reserve membership stock.
- (f) It has printed many of its forms, checks, stationery and incurred other substantial expenses.
- (g) It has represented to the public that it will be open for business momentarily.

WHEREFORE, intervening defendant prays:

(1) That the court enter a judgment declaring and adjudging that defendant, Comptroller of Currency, is authorized and empowered by the provisions of the National Banking Act (12 U.S.C. 21-27) in his sole discretion to issue to intervening defendant a certificate of authority to commence the business of banking in Jefferson Parish, Louisiana.

(2) That the court deny the prayer of plaintiffs' complaint for a permanent injunction and a preliminary injunction against defendant.

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE
SYSTEM

Washington, D. C.

In the Matter of the Application of: WHITNEY HOLDING CORPORATION for approval of its becoming a bank holding company by acquiring the stock of Crescent City National Bank, New Orleans, Louisiana, and Whitney National Bank in Jefferson Parish, Jefferson Parish, Louisiana

ORDER APPROVING APPLICATION UNDER BANK HOLDING
COMPANY ACT

There has come before the Board of Governors, pursuant to section 3(a) (1) of the Bank Holding Company Act of 1956 (12 USC 1842) and section 222.4(a) (1) of Federal Reserve Regulation Y (12 CFR 222.4(a) (1)), an application on behalf of Whitney Holding Corporation, New Orleans, Louisiana, for the Board's prior approval of action whereby Whitney Holding Corporation would become a bank holding company by acquiring substantially all of the voting stock of (1) the Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Jefferson Parish, Louisiana (a proposed new bank). A Notice of Receipt of Application was published in the Federal Register on July 28, 1961 (26 Federal Register 6792), which provided an oppor-

tunity for submission of comments and views regarding the proposed acquisitions, and the time for filing such comments and views has expired and all comments and views filed with the Board have been considered by it. Pursuant to Order published in the Federal Register on December 23, 1961 (26 Federal Register 12312), a public proceeding with respect to the application was held before the Board on January 17, 1962 to provide a further opportunity for the expression of views and opinions by interested persons.

It is Ordered, for the reasons set forth in the Board's Statement of this date, that said application be and hereby is granted, provided that the acquisitions approved herein shall not be consummated (a) sooner than seven calendar days after the date of this Order or (b) later than three months after said date, and provided further that Whitney National Bank in Jefferson Parish shall be opened for business within six months after said date.

Dated at Washington, D. C., this 3rd day of May, 1962.

By order of the Board of Governors.

Voting for this action: Chairman Martin, and Governors Balderston, Mills, Shepardson, King, and Mitchell.

Voting against this action: Governor Robertson.

MERRITT SHERMAN,
Secretary.

(Seal).

Filed July 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER ALLOWING WHITNEY NATIONAL BANK IN JEFFERSON
PARISH TO INTERVENE AS A DEFENDANT

The Whitney National Bank in Jefferson Parish having moved the Court for leave to intervene as a defendant in this action, and such motion having come on to be heard on July 6, 1962, and at the hearing counsel for the plaintiffs and for the defendant Comptroller of the Currency having orally consented to the granting of such motion, it is hereby

Ordered that the Whitney National Bank in Jefferson Parish have leave to intervene in this cause and that said bank be and the same hereby is made an additional party defendant herein, and it is

Further Ordered that the Answer of such intervening defendant, presently attached as an exhibit to the motion for intervention, may be filed in the Clerk's office in the same manner and with the same effect as if such intervening defendant had been named as an original party to this cause, and it is

Further Ordered that the caption of this action shall hereafter read as follows:

BANK OF NEW ORLEANS AND TRUST COMPANY, GUARANTY
BANK AND TRUST COMPANY, *Plaintiffs*,
BANK OF LOUISIANA IN NEW ORLEANS, *Intervening Plaintiff*,
v.
JAMES J. SAXON, Comptroller of the Currency, *Defendant*,
WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Intervening
Defendant*.

Done this — day of July, 1962.

/s/ ALEXANDER HOLTZOFF,
United States District Judge.

1 Filed July 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF
PRELIMINARY INJUNCTION

The motion of plaintiffs for a preliminary injunction having come on for hearing on July 6, 1962, and the Court having considered the Complaint herein, the affidavits filed in support of and in opposition to the motion, the evidence in the form of written exhibits submitted during the aforementioned hearing, and having heard oral argument of

counsel, hereby makes the following findings of fact and conclusions of law:

Findings of Fact

1. The defendant, James J. Saxon, Comptroller of the Currency proposes to issue, during the pendency of this action and before same can be heard and determined on its merits, a certificate of authority pursuant to 12 U.S.C. § 27 to the intervening defendant herein, Whitney National Bank in Jefferson Parish, which would enable it to open and operate banking facilities in Jefferson Parish, Louisiana.

2. Plaintiffs contend that the issuance of said certificate of authority would be unlawful and contrary to 12 U.S.C. § 36, 1845 and 1846 and Louisiana Revised Statutes, Title 6, Section 54.

3. Plaintiffs contend further that the issuance of said certificate would cause each to sustain irreparable injury and damages to its banking business and properties emanating from said Jefferson Parish, Louisiana and it appears that such injury and damages to plaintiffs may exceed the sum of \$10,000, and that plaintiffs are without any adequate remedy at law.

4. The granting of a preliminary injunction is necessary to preserve the status quo until the merits of the case can be decided.

Conclusions of Law

1. This Court has jurisdiction over this action under 28 U.S.C. § 1331.

2. Plaintiffs are entitled to a preliminary injunction restraining the defendant Comptroller of the Currency from issuing a certificate of authority to the Whitney National Bank in Jefferson Parish for the opening and operation of banking facilities in Jefferson Parish, Louisiana until this action can be heard and determined on its merits.

Done this 10 day of July, 1962.

/s/ ALEXANDER HOLTZOFF,
United States District Judge.

Filed July 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PRELIMINARY INJUNCTION

This cause came on to be heard on plaintiffs' motion for a preliminary injunction and the Court having considered the Complaint, the affidavits submitted in support of said motion and in opposition thereto, the exhibits submitted to the Court during the hearing of the motion, and having heard counsel, and, it appearing to the Court after due deliberation that unless a preliminary injunction is granted herein, defendant James J. Saxon, Comptroller of the Currency may, before this action can be determined on its merits, issue a certificate or certificates authorizing defendant Whitney National Bank in Jefferson Parish, or persons or corporations in active concert and participation with said defendant, to open and operate banking facilities in Jefferson Parish, State of Louisiana, to the irreparable injury and damage of the plaintiffs herein, and the Court having made and filed its findings of fact and conclusions of law, it is this 10 day of July, 1962,

Ordered, that defendant James J. Saxon, Comptroller of the Currency, his agents, servants, employees and attorneys, be and they hereby are restrained and enjoined, pending the determination of this action or until further order of this Court, from issuing or delivering any certificate, pursuant to 12 U.S.C. § 27 or otherwise, to defendant Whitney National Bank in Jefferson Parish, or to any person, or corporation in active concert or participation with said Whitney National Bank in Jefferson Parish, authorizing the opening and operation by them or any of them of new branch bank or banking facilities within the limits of Jefferson Parish, State of Louisiana: provided that plaintiffs give security in the sum of \$50,000 for the payment of such costs and damages as may be incurred or

suffered by Whitney National Bank in Jefferson Parish who is found to have been wrongfully enjoined, such bond to be submitted no later than the 17th day of July, 1962.

/s/ ALEXANDER HOLTZOFF,
United States District Judge.

Filed July 11, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION OF DEFENDANT COMPTROLLER OF THE CURRENCY FOR
SUMMARY JUDGMENT

Comes now the defendant Comptroller of the Currency, by his undersigned counsel, and moves the Court to enter summary judgment in his favor on the grounds that there is no genuine issue herein as to any material fact and that he is entitled to judgment as a matter of law. Attached in support of this motion are the statement required by Local Civil Rule 9(h) and a memorandum of points and authorities.

In further support of this motion, specific reference is here made to the affidavit of James J. Saxon, filed on June 20, 1962, and to defendant's memoranda filed on June 20, June 26, and July 3, 1962, in opposition to the previous motion for preliminary injunction. General reference is also made to the other papers on file in this action, since a motion for summary judgment searches the entire record before the Court.

/s/ JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

/s/ DONALD B. MACGUINEAS,
/s/ DAVID V. SEAMAN,
*Attorneys, Department of Justice
Attorneys for Defendant Comptroller
of the Currency*

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed July 11, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF DEFENDANT COMPTROLLER OF THE CURRENCY
PURSUANT TO LOCAL CIVIL RULE 9(h)

The defendant Comptroller of the Currency, pursuant to Local Civil Rule 9(h), submits the following statement of the material facts as to which he contends there is no genuine issue in this case:

1. On October 3, 1961, the Comptroller of the Currency gave preliminary approval to the formation of two new national banks, the Crescent City National Bank and the Whitney National Bank in Jefferson Parish, subject to approval by the Federal Reserve Board of the formation of a holding company for the purpose of acquiring the stock of such banks, pursuant to the Bank Holding Company Act of 1956.

2. On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of the Crescent City National Bank and the Whitney National Bank in Jefferson Parish.

3. On May 18, 1962, the Comptroller of the Currency approved the consolidation of the existing Whitney National Bank in New Orleans into the Crescent City National Bank under the name Whitney National Bank in New Orleans. This consolidation was accomplished on May 24, 1962.

4. On May 24, 1962, the Whitney Holding Corporation, which had been previously organized under Louisiana law, completed the organization of the Whitney National Bank in Jefferson Parish by purchasing all of its stock (except for directors' qualifying shares) for \$650,000.00. Bylaws were adopted and the directors and officers were elected.

5. The Articles of Association and the Certificate of Organization of the Whitney National Bank in Jefferson

Parish have been executed and filed with the Comptroller of the Currency pursuant to 12 U.S.C. 24, and thereupon the Whitney National Bank in Jefferson Parish became a new national bank and a body corporate.

6. The present suit was filed on July 9, 1962, just as the Comptroller of the Currency was about to issue a Certificate of Authority pursuant to 12 U.S.C. 27, permitting the Whitney National Bank in Jefferson Parish to commence banking operations.

/s/ JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

/s/ DONALD B. MACGUINEAS,
/s/ DAVID V. SEAMAN,
Attorneys, Department of Justice
Attorneys for Defendant Comptroller
of the Currency

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed July 16, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Vol: 1

Prepared for: Court

Date: July 6, 1962

GERALD NEVITT,
Official Reporter,
U. S. Court House,
Washington 1, D. C.,
STERling 3-5700,
Extension 274.

[1] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

BANK OF NEW ORLEANS AND TRUST COMPANY, MERCHANTS
TRUST AND SAVINGS BANK, GUARANTY BANK AND TRUST
COMPANY, *Plaintiffs,*
vs.

JAMES J. SAXON, Comptroller of the Currency, Washington,
D. C., *Defendant.*

Washington, D. C.
Friday, July 6, 1962.

The above cause came on for hearing of motions before
The Honorable Alexander Holtzoff, Judge, United States
District Court for the District of Columbia.

APPEARANCES:

On behalf of Plaintiff Bank of New Orleans & Trust:
Edward L. Merrigan, Esq., A. J. Waechter, Esq.

On behalf of Plaintiff Guaranty Bank & Trust: James
W. Bean, Esq.

On behalf of Intervening Plaintiff Bank of Louisiana
In New Orleans: G. Harrison Scott, Esq.

[2] On behalf of Defendant James J. Saxon: David V.
Seaman, Esq., Department of Justice. Robert Bloom,
Esq., Chief Counsel, Comptroller of the Currency.

On behalf of Intervening Defendant Whitney National
Bank In Jefferson Parish: Malcolm L. Monroe, Esq.,
Hamilton Carothers, Esq.

[3] PROCEEDINGS

The Deputy Clerk: Bank of New Orleans vs. Saxon.

Mr. Merrigan: Your Honor, may I introduce to the Court
some counsel from out of the District of Columbia who
have appeared here on the motion this morning?

The Court: Very well.

Mr. Merrigan: Of course, I am Mr. Merrigan, repre-
senting the Bank of New Orleans & Trust Company, one
of the plaintiffs.

Mr. A. J. Waechter, of the Louisiana Bar, is here to represent the Bank of New Orleans & Trust Company.

Mr. James W. Bean, of Lafayette, Louisiana, is here to represent the Guaranty Bank and Trust Company of Lafayette, Louisiana.

Mr. G. Harrison Scott, of New Orleans, is here to represent another plaintiff, The Bank of Louisiana In New Orleans.

On the other side of the table, Your Honor—

The Court: Just a moment. It is not sufficient to introduce them. You have to move that they be admitted *pro hac vice*.

Mr. Merrigan: Your Honor, I so move, for the attorneys appearing on behalf of the plaintiffs, and I would like to make the same motion, if I might, for Mr. Malcolm [4] Monroe—

The Court: Yes, but will you also state of what state bar each counsel is a member, so we have a record of that.

Mr. Merrigan: Yes, Your Honor. Mr. Waechter is an attorney of the Louisiana Bar. Mr. Bean is a member of the Bar of the State of Louisiana. Mr. Scott is a member of the Bar of the State of Louisiana. Mr. Malcolm Monroe, representing the proposed intervenor, applicant for intervention, is a member of the Bar of the State of Louisiana.

Mr. Seaman: Your Honor, Mr. Monroe is also a member of the Bar of the District of Columbia.

Mr. Merrigan: I didn't know this, Your Honor.

The Court: Then you do not have to move his admission.

Mr. Merrigan: No, Your Honor.

Mr. Seaman: Your Honor, if I may, I am David Seaman, of the Department of Justice. Before we start, I would like to make a matter of procedure as to these motions.

Your Honor, there are three motions before you, as I understand it, this morning. The motion that is set down first is the motion for preliminary injunction. The second motion is the motion of the Whitney National Bank to intervene as a defendant. That motion has been pending for some time, Your Honor.

[5] The Court: You say motion for preliminary injunction. What is the next motion?

Mr. Seaman: The motion of the Whitney National Bank In Jefferson Parish, Your Honor, to intervene as a defendant. They are the bank, Your Honor, that want the certificate from the Comptroller.

The Court: Just tell me what the motions are, first.

Mr. Seaman: Yes, Your Honor. That is the second. And the third is the motion of one of the plaintiffs to withdraw. That is not opposed, Your Honor, and as far as I know it can be granted immediately.

The Court: A motion to withdraw what?

Mr. Seaman: They are one of the three plaintiffs, Your Honor—

The Court: You say motion to withdraw. Motion to withdraw what?

Mr. Seaman: It is one of three plaintiffs, Your Honor. They want to withdraw as a plaintiff.

The Court: In other words, they want to dismiss the action as to them?

Mr. Seaman: Yes, Your Honor.

The Court: Is there any opposition to that?

Mr. Seaman: None whatsoever, and I have a proposed order, Your Honor.

[6] The Court: Suppose you submit an order to that effect. I think the motion for leave to intervene should be heard before the motion for an injunction.

Mr. Seaman: Yes, Your Honor, that is our position.

Mr. Merrigan: Your Honor, we will consent to the intervention of the Whitney National Bank In Jefferson Parish, provided, of course—which we have the right to do under the rules—we can move at some later time to add the parent bank, Whitney National Bank of New Orleans. I won't press this on the Court at this time because I think it will become—

The Court: As I understand it from Mr. Seaman's statement, there are two motions before me, two contested motions; is that correct?

Mr. Seaman: Yes, Your Honor.

The Court: One motion for preliminary injunction and the other is a motion for leave to intervene.

Mr. Merrigan: But we withdraw—

The Court: I think it would be appropriate to hear the second motion first, would it not?

Mr. Seaman: Yes, Your Honor.

Mr. Merrigan: Yes, Your Honor, and we are trying to expedite the proceedings because I think the real important matter before the Court is the motion for preliminary injunction.

[7] The Court: Is there any opposition to the motion for leave to intervene?

Mr. Merrigan: We withdraw our opposition to that.

The Court: Is the Government opposing it?

Mr. Seaman: Certainly not, Your Honor.

The Court: Very well, then, that will be granted by consent.

Mr. Monroe: Your Honor, could I point out we endeavored to intervene some time ago and we were vigorously opposed. I just want to point that out.

The Court: That has become an academic question.

Mr. Monroe: I understand, Your Honor.

The Court: Who is the intervention petitioner? Who is the intervenor?

Mr. Seaman: Your Honor, the intervenor is the Whitney National Bank In Jefferson Parish. They are the ones that want the certificate.

The Court: I see. Very well. So, there is just one matter before me to be argued now, the motion for preliminary injunction.

Mr. Seaman: Yes, Your Honor.

The Court: Against the Comptroller of the Currency.

Mr. Seaman: Yes.

The Court: Very well, I will hear the motion.

[8] Mr. Merrigan: Your Honor, this is a motion for preliminary injunction to restrain the Comptroller of the Currency pendente lite from issuing a certificate under the National Banking Act, Title 12 United States Code, for the opening and operation of banking facilities in Jefferson Parish, Louisiana, by either the Whitney National Bank of New Orleans, which is a bank located in the City of New Orleans, Parish of Orleans, or by the so-called Whitney Holding Corporation or by the Whitney National Bank In Jefferson Parish, which has just been admitted to these proceedings by intervention.

The Court: Just a moment. I am afraid you got ahead of me a little bit. The injunction is requested against the Comptroller of the Currency against issuing a certificate to whom?

Mr. Merrigan: To any one of those three banks, the Whitney National Bank of New Orleans, the Whitney Holding Corporation, or the so-called Whitney National Bank In

Jefferson Parish, the party who has just been allowed to intervene.

And, of course, the basis of our opposition against the intervention previously was that the real party in interest was the Whitney National Bank of New Orleans or the Whitney Holding Corporation.

Now, Your Honor, when this matter came on before [9] Judge Hart on June 27th, a temporary restraining order was issued, holding the certificate of the Comptroller in abeyance until today; and, of course, the temporary restraining order expires today and we are here, of course, on the motion for preliminary injunction.

The plaintiffs contend—

The Court: Of course, a temporary restraining order is not an adjudication of any kind. It is issued *ex parte* and all it is intended to do is to hold matters in status quo for ten days, that is all.

Mr. Merrigan: Well, in this case, Your Honor, that is entirely true; but in this case it was granted on notice and after argument of some kind before the Court.

The Court: That does not make any difference. That is the only effect a temporary restraining order has.

Mr. Merrigan: Entirely correct, Your Honor.

Now, plaintiffs contend, Your Honor, to sharpen the issues here, that under the facts of this case the opening of banking facilities in Jefferson Parish, Louisiana, and the granting of the certificate by the Comptroller are unlawful under the following provisions of law:

First, Section 36 of the National Bank Act, which is Title 12, 36 (c). Under the statutes of Louisiana, Revised Statute 6:54, which was passed by the State of Louisiana [10] in pursuance of Section 36 of the National Bank Act. And I will—

The Court: Now suppose, if you don't mind, you make your references to the United States Code rather than to the constituent statute. We always use the Code because it is not practical to have a copy of every possible statute. You refer to 12 United States Code, section what?

Mr. Merrigan: It is Title 12 United States Code, Section 36.

The Court: You may proceed.

Mr. Merrigan: Section 36 (c) provides that a national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches

beyond the limits of the city in which its main office is located, if such establishment and operation are at that time expressly authorized to state banks by the law of the state in question.

The Court: Where are you reading from? I have the statute here.

Mr. Merrigan: 12 United States Code, Section 36 (c), Your Honor.

The Court: Yes, but it is a very long section, very long sub-section. What part of it were you reading from?

Mr. Merrigan: I am quoting from (c)(1) and (c)(2).

[11] The Court: Yes.

Mr. Merrigan: And that says, of course, Your Honor, that a national bank which has a main office in the City of New Orleans, Parish of Orleans, can open a branch bank beyond the City of New Orleans, Parish of Orleans, only if the laws of the State of Louisiana expressly permit state banks to do the same thing; and the statute as passed by Congress says that the state statute involved must authorize the opening of that branch by language specifically granting such authority affirmatively and not merely by implication or recognition.

The Court: Where are you reading from now?

Mr. Merrigan: (c)(2), Your Honor.

The Court: Yes.

Mr. Merrigan: Now if I could direct Your Honor's attention to Sub-section (f) of Section 36, which is on the next page, that section defines a branch, and it says that a branch as used in this section shall be held to include any branch bank, branch office, branch agency, additional office or any branch place of business located in any state of the United States.

In other words, Your Honor, Congress has left to the states complete control over branch banking under Section 36. They say that a national bank which is chartered into [12] business by the Comptroller of the Currency can open branches only if the state banks chartered by the laws of the various states can do the same thing.

The Court: Now, what does the Comptroller of the Currency propose to do that you seek to have enjoined?

Mr. Merrigan: The Comptroller of the Currency proposes to issue a certificate authorizing the Whitney National Bank of New Orleans, which is the largest bank in the State of Louisiana, larger than all—as large as all the banks com-

bined in the City of New Orleans—to open a branch, we say, in Jefferson Parish, contrary to Section 36 and contrary to the statutes of Louisiana.

The Court: What is your client's interest in the matter, legal interest? Is it just that they want to avoid competition?

Mr. Merrigan: Well, Section 36, Your Honor, was passed by Congress as an antitrust statute, practically. It was to prevent monopoly in banking. It was to prevent branch banking by large banks beyond the limits of a parish.

The Court: I understand, but what legal interest does your client have, other than the interest of any private citizen?

Mr. Merrigan: Well, a very, very—

[13] The Court: Let's assume that a proposed action of the Comptroller of the Currency is illegal. Let's concede that arguendo. An ordinary citizen who has no legal interest in the matter may not maintain an action to enjoin it.

Mr. Merrigan: Absolutely granted.

The Court: Now, then, what is your legal interest? What is your standing to sue?

Mr. Merrigan: We have before the Court three state banks of the State of Louisiana, two of whom have their main offices in the City of New Orleans, Louisiana, Parish of Orleans, and whose customers, to a great degree, running into millions of dollars, are located in Jefferson Parish. By state law those banks cannot open branches beyond the limits of the City of New Orleans; and, yet, the Comptroller is authorizing the largest bank, the largest national bank in the whole state, going over the parish line, opening branch facilities in Jefferson, and thereby endangering all of the property and business interests of these banks.

The Court: You have not answered my question. What legal interest does the plaintiff have to seek an injunction against an alleged illegal act of the Comptroller of the Currency? What is your standing to sue? Is it because you have additional competition, is that it?

Mr. Merrigan: No; that we will have additional [14] competition, Your Honor, but they have millions of dollars of deposits—and this is in affidavit form in conceded facts before the Court—they have millions of dollars of deposits emanating from Jefferson Parish; that is, persons resident in Jefferson Parish, firms located in Jefferson Parish. They have millions of dollars of loans to business firms located

in Jefferson Parish who come to the banks in New Orleans to make these loans and to deposit their funds.

If the Comptroller of the Currency, contrary to Section 36, contrary to the statutes of Louisiana, authorizes the Whitney National Bank, contrary to law, to open branches beyond the Parish of New Orleans, all of these tremendous banking properties of the plaintiffs will be put at the—well, they will lose tremendous amounts of—

The Court: Well, that is what I say. Your interest, in other words, is to eliminate potential additional competition, is it not?

Mr. Merrigan: No; loss of property, Your Honor.

The Court: But you don't lose any property. You lose business to a competitor. Isn't that what this amounts to?

Mr. Merrigan: Well, we have mortgages, the plaintiffs have mortgages on property located in Jefferson Parish.

The Court: Nothing is going to happen to those [15] mortgages as a result of a new bank being established.

Mr. Merrigan: If you lose the account of the borrower, if you lose the account of the depositors from Jefferson Parish, if you lose the vast amount of business that comes from Jefferson Parish, Your Honor—and we say that is the purpose of the National Bank for going there—we suffer net loss of profits, loss of resources in New Orleans.

The Court: It still comes down that you want to avoid additional competition.

It is entirely legitimate to desire to avoid additional competition, but why not say so?

Mr. Merrigan: Well, Your Honor, I want to say that that is true, of course. Naturally it is true. I think that was the purpose of Section 36, that no one would be given an upper hand on the other fellow. And that is why—

The Court: Very well, you may proceed.

Mr. Merrigan: That is why they based it on state statutes.

Now, if Your Honor please, as I pointed out, Section 36 of the National Bank Act says that branching can be done only if state law permits it. And I have here for Your Honor the revised statute, 6:54, of the Louisiana Revised Statutes, which provides that a bank can open a branch only in a parish where there are no other state banks, savings [16] banks and trust companies.

So that all parties on this motion I think concede, and they concede on the face of the briefs—

The Court: Read that Louisiana provision once more.

Mr. Merrigan: It says all banks, savings banks and trust companies having a capital of \$100,000 or more may open and maintain a branch office or branch offices in parishes in which there are no state banks, savings banks and trust companies.

All parties on this motion, including the defendants, including the Government, including the Comptroller, agree that since 1930 or thereabouts it has been unlawful for any national bank or any state bank to open branches beyond its parish line because that would violate Section 36 and it would violate the provision of the Louisiana law.

The Court: Let me see the statute. Do you have the Louisiana statute?

Mr. Merrigan: Yes, we do, Your Honor.

(The document was handed to the Court by Mr. Merrigan.)

The Court: Which section is that?

Mr. Merrigan: Section 54, Your Honor.

The Court: What part of this section do you say would be violated? There are several provisions in this [17] section. This section authorizes banks having a capital of \$100,000 or more to open branch offices in parishes in which there are no state banks, savings banks or loan companies.

Is it your contention that the converse follows by necessary implication, that if there are other state banks in the parish a branch office may not be maintained? Is that your—

Mr. Merrigan: That is correct, Your Honor, and that is conceded by the parties before the Court.

The Court: I see. Very well, proceed. I think I get your point.

Mr. Merrigan: Now, Your Honor, we refer, too, so that Your Honor might have the full picture that is before the Court, we refer, too, to violations of the Federal Bank Holding Company Act, which is found at Title 12, United States Code, 1841 et seq., and particularly, Your Honor, Section 1845 and Section 1846.

Section 1845 provides that after May 9, 1956, it shall be unlawful for a bank to invest any of its funds in the capital stock, bonds, debentures or other obligations of a bank

holding company of which it is a subsidiary or of any other subsidiary of such bank holding company.

Section 1846 of Title 12, entitled Reservation of Rights to States, says the enactment by the Congress of this [18] chapter shall not be construed as preventing any state from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies and subsidiaries thereof.

Now, if it please the Court, Whitney National Bank of New Orleans, which, as I pointed out to the Court, is the largest bank in the State of Louisiana and just about one of the largest in the entire south—it has \$500,000,000 in resources, about \$14,000,000 in undivided profits, about \$27,000,000 in its surplus account, and now holds approximately 45 per cent of all deposits in all banks in the City of New Orleans combined—knew that it could not under any circumstances legally open a branch, as I pointed out before, beyond the limits of the parish or county of Orleans in Jefferson Parish.

The facts before the Court, which are largely conceded, and the defendants' exhibits which are before the Court, which I will refer to in just a moment, show that the Whitney National Bank started several years ago to consider ways and means by which it could circumvent Section 36 of the National Bank Act and get a branch office over in Jefferson Parish, Louisiana.

For example, Your Honor, before the Court is Defendant's Exhibit 4, which is testimony given by the President [19] of the Whitney National Bank of New Orleans before the Federal Reserve Board. I have a copy of that defendant's exhibit, Your Honor, if you would like to see it.

(The document was handed to the Court by Mr. Merrigan.)

Mr. Merrigan: This is what the President of the Whitney National Bank of New Orleans said, at pages 6 through 9, Your Honor:

"The parish in our state is equivalent to a county," he said.

"Under present laws in our state, the Whitney is not permitted to establish branches outside the Parish of Orleans.

"There is a rapidly growing industrial area in adjoining Jefferson Parish up river from Orleans."

He goes on to say:

“The industrial development, in the form of large plants, more or less extends up river on both sides”—that is the Mississippi River running up through Louisiana—“to Baton Rouge, about 80 miles.

“There is, therefore, good reason to look forward to continued industrial growth along the river [20] with a concentration of small industries in Jefferson Parish.

“The management of the Whitney National Bank has been studying and weighing alternative methods of entering Jefferson Parish to serve our present customers and to participate in the further growth of that area.”

And now he goes on to say this, Your Honor, and we are coming right to the heart of this case:

“The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution, provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company.”

Now, if the Court please, the plan——

The Court: May I ask you a question before you proceed?

Mr. Merrigan: Yes, Your Honor.

The Court: To pinpoint this matter, what is the precise nature of the certificate which the Comptroller of the Currency proposes to issue?

Mr. Merrigan: He proposes to issue a certificate to the Whitney National Bank in Jefferson Parish, which the [21] plaintiffs say will be a branch bank of the Whitney National——

The Court: I know, but that is not what I asked you. What is the precise certificate? I am not asking what your construction is. I know you construe it as creating a branch bank, but what actually does it do, technically?

Mr. Merrigan: It is a certificate authorizing the Whitney National Bank In Jefferson Parish—which I am about to show Your Honor how it was organized, with what funds and how—to open banking facilities in Jefferson Parish.

The Court: Well, would it in so and so many words

authorize the Whitney National Bank to open a branch or an office in Jefferson Parish?

Mr. Merrigan: No.

The Court: That is what I want to know. What will it do?

Mr. Merrigan: No, it doesn't.

The Court: What does it do?

Mr. Merrigan: It authorizes them to open the same thing as a branch.

The Court: I know, but I want to know what the certificate does. I don't want your construction of it. First tell me what it does in precise language.

Mr. Merrigan: I don't have the certificate before me because, of course, there is no certificate as yet; it is [22] restrained.

The Court: I know, but what is the application that has been presented to the Comptroller? What does it seek?

Mr. Merrigan: It seeks to open a bank in Jefferson Parish by the Whitney National Bank in Jefferson Parish.

The Court: Well, I didn't so understand it from the testimony that you just read. I thought that the Whitney National Bank seeks to create a holding company.

Mr. Merrigan: That is correct.

The Court: Which, in turn, would own stock in another bank to be established in Jefferson Parish.

Mr. Merrigan: That is correct.

The Court: Well, that is different, isn't it, from authorizing the establishment of a branch of the Whitney National Bank?

Mr. Merrigan: Well, if that is different, Your Honor, then Section 36 will be repealed, because any bank could do it that way.

The Court: But why didn't you tell me? I have been trying to ascertain just what the application of Whitney National Bank was in precise terms.

Mr. Merrigan: That is exactly what I wanted to hand to Your Honor.

[23] The Court: You have been telling me that the Whitney National Bank, or that the Comptroller of the Currency proposes to issue a certificate authorizing the establishment of a branch, and of course it seemed to me strange that the Comptroller of the Currency would violate the express provision of law. Now it appears he does not propose to do that at all; he proposes to authorize the

creation of a holding company which would own the stock of a bank.

Mr. Seaman: Excuse me, Your Honor——

The Court: Is that correct?

Mr. Seaman: That is not precisely correct, Your Honor, no.

The certificate is to the Whitney National Bank In Jefferson Parish directly; it is not to the holding company. The holding company is a state corporation.

The Court: But it will be a different bank, not a branch of the Whitney National Bank?

Mr. Seaman: Precisely, Your Honor.

Mr. Merrigan: Except, Your Honor, that we are going to be talking about some law that is well established that makes——

The Court: I know, Mr. Merrigan, but before I can construe what a transaction amounts to I have to know what the form of the transaction is, and you have been telling me [24] all this time that the Comptroller of the Currency proposes to authorize the Whitney National Bank to establish a branch in Jefferson Parish when he does not do that at all.

Mr. Merrigan: Well, Your Honor, you will recall that I directed your attention to section (f), I believe it was, of Section 36, which defines a branch to be any additional office of another bank.

The Court: Yes, but as I understand it, this is a separate corporation, a separate banking institution.

Mr. Merrigan: Well, except. Your Honor, if you would please permit me to move to the next step.

The Court: Yes, you may proceed, but it took me an awful long time to find out what the form of the transaction was.

Mr. Merrigan: Well, I am going to be honest with you, it took me a long time to understand it, too.

The Court: I know, but I think you can help the Court by being more exact.

You may proceed.

Mr. Merrigan: Now, I just quoted to Your Honor language of the President of the Whitney National Bank which said that under present laws they were not permitted to branch, that they had been studying alternative methods of getting into Jefferson for years, and that they finally decided that the [25] holding company was the proper solu-

tion, provided we could put the ownership of the present Whitney National Bank of New Orleans into such a company, that is, a holding company, and by use of Whitney National Bank of New Orleans funds establish a bank in Jefferson Parish which would likewise be fully owned by the holding company.

Now, before Your Honor is an exhibit which we made up from another exhibit which has been introduced into this action by the defendant himself.

(The document was handed to the Court by Mr. Merrigan.)

Mr. Merrigan: On the second page of this so-called re-organization plan we have the various steps by which the Whitney National Bank of New Orleans went about getting this bank into Jefferson Parish.

Step one, Your Honor, we find the Whitney National Bank of New Orleans with 112,000 shares of stock, taking \$350,000 of its own capital out of its capital account and forming the so-called Whitney Holding Corporation. Now, that is the first place that Section 1845 of Title 12 comes into play.

Now, we have the Whitney National Bank of New Orleans, with its holding corporation, with \$350,000 of its own capital, receiving 5600 shares of the holding corporation [26] for that \$350,000 cash investment.

In step two, the Whitney Holding Corporation then creates an organization known as the Crescent City National Bank, which also has 112,000 shares. And the holding corporation takes the \$350,000 it got from the Whitney National Bank of New Orleans and puts it into this Crescent City National Bank and, in return, takes all of the shares of the Crescent City National Bank.

Now, Your Honor, the Crescent City National Bank never opened its doors, it is not a bank, never operated anywhere, and until step three here, where it merges with the old Whitney National Bank of New Orleans, never conducted a bank anywhere.

But the Comptroller of the Currency in this case issued a certificate authorizing the formation of the Crescent City National Bank.

The Court: Now, what do you seek to enjoin?

Mr. Merrigan: I seek to enjoin back here at step four, Your Honor, when we get to step four, because now in step three, having organized this phantom bank, a bank that doesn't exist anywhere but on paper, the Whitney National

Bank of New Orleans merges by agreement with this phantom bank and thereby eliminates any dissenting stockholders in the Whitney National Bank who don't want to go along with the plan. The [27] Whitney——

The Court: What do you mean by merges?

Mr. Merrigan: By agreement. They have a merger agreement.

The Court: You mean that separate corporate entities are eliminated, it is all one corporation now?

Mr. Merrigan: You started with the Whitney National Bank of New Orleans, it forms a holding corporation, then the holding corporation forms a phantom bank, the old bank——

The Court: Suppose we call it Crescent City instead of phantom.

Mr. Merrigan: It doesn't exist.

The Court: I do not know what you mean by a phantom.

Mr. Merrigan: It is a bank that the Comptroller has issued a certificate to, Your Honor——

The Court: But let's not use opprobrious appellations.

Mr. Merrigan: I'm sorry, Your Honor. It's a bank that exists only on paper.

The Court: Well, all banks started on paper; then they build themselves up.

Mr. Merrigan: They usually open their doors, though, and let you and me come in and make deposits and borrow [28] money. But this bank wasn't formed for that purpose.

The Court: Well, they haven't gotten that far, perhaps.

Mr. Merrigan: No, Your Honor, admittedly under the reorganization plan it was formed for one purpose only, to merge with the parent bank, Whitney National Bank of New Orleans.

The Court: What do you mean by merge? Do you mean that separate corporate entities have been eliminated and it is all one corporate entity?

Mr. Merrigan: The old bank, Whitney National Bank of New Orleans, the \$500,000,000 bank in New Orleans, merges into Crescent City National Bank, which is a bank on paper. The Whitney Holding Corporation then owns all of the stock in the Whitney National Bank of New Orleans, and the Whitney National Bank in New Orleans, as merged into this Crescent City Bank, then owns all of the stock in the Whitney Holding Corporation; and any dissenting stockholders in the Whitney National Bank have been eliminated.

The Court: Then there is no merger. The separate corporate entities still exist, do they not?

Mr. Merrigan: Well, it's part of this fantastic plan, we say——

The Court: That is my difficulty with your use of [29] the term merger. A merger of two corporations means that the two separate corporate entities are eliminated and they become one corporation.

Mr. Merrigan: Well, that does happen here.

The Court: Well, in this case Crescent still remains as a separate corporate entity, does it not?

Mr. Merrigan: It survives and then changes its name back to Whitney National Bank of New Orleans. You see, this is what made it so difficult for me, Your Honor.

The Court: Well, I still don't understand what happened to Crescent. Does Whitney own all of its stock or is Crescent liquidated as a corporate entity or what?

Mr. Merrigan: All of its stock is owned by the holding corporation and the holding corporation got its stock with \$350,000 of money which came from the Whitney National Bank of New Orleans.

The Court: Let's forget the amounts. What happened to the corporate structure?

Mr. Merrigan: Whitney National Bank of New Orleans, which started here, merged into this bank, Crescent City National Bank.

The Court: But what do you mean by merged? That is what I want to know. Did it buy its stock or was there an agreement of merger which eliminated the separate corporate [30] entities?

Mr. Merrigan: That is correct, Your Honor.

The Court: You know, I think it would be much clearer if you would use precise technical terminology instead of using figures of speech.

Mr. Merrigan: Well, I will in step three——

The Court: Figures of speech do have a literary flavor, but sometimes they convey wrong ideas.

Mr. Merrigan: Well, I agree, Your Honor, and I don't mean to do that.

The Court: I know you don't mean it, but it would clarify the Court's thinking if you used precise legal terminology, because the word merger, you know, can mean any one of a lot of things.

Mr. Merrigan: Your Honor, they merged by agreement.

There was an agreement between the Crescent City National Bank and the Whitney National Bank of New Orleans whereby all of the assets of the Whitney National Bank of New Orleans were taken over by the Crescent City National Bank. The Whitney National Bank of New Orleans, as it existed before that agreement——

The Court: The words taken over can mean a lot of things. Did the Whitney buy the assets of Crescent? Did it buy its stock? Or was Crescent liquidated as a corporation? [31] Any one of those things can be a taking over and sometimes the form that a transaction takes is very important.

Mr. Merrigan: I agree with Your Honor entirely.

The Court: Now, what is the form of the transaction?

Mr. Merrigan: The form of the transaction was a merger agreement between the Whitney National Bank of New Orleans and the Crescent City National Bank. By the terms of the agreement the Crescent City National Bank acquired all of the assets of the Whitney National Bank of New Orleans. The Whitney Holding Corporation was a party to that agreement. The Whitney Holding Corporation, which owned all the stock in the Crescent City National Bank by that time, acquired all the stock in the Whitney National Bank of New Orleans. In turn for this merger the Whitney National Bank of New Orleans acquired all the stock of the holding corporation, 1,120,000 shares.

The Court: What happened to the stock of Crescent?

Mr. Merrigan: The stock of Crescent was already owned at that time, under step two, by the holding corporation.

The Court: And it continues to be owned?

Mr. Merrigan: Yes.

The Court: In other words, that is not a true merger.

[32] Mr. Merrigan: Really not; really not. But that is what they propose to do, and the purpose of it was to eliminate dissenting stockholders in the Whitney National Bank. Under the provisions of the National Bank Act and the Comptroller's regulations if a dissenter doesn't want to go along with a plan he can have his shares appraised or the bank can buy him out as part of the merger arrangement.

The Court: Let me see if I understand it correctly, and I want you to correct me if I am wrong. The ultimate result was that Whitney National Bank owned all of the stock of Whitney Holding Company and Whitney Holding

Company owned all of the stock of Crescent Bank, is that correct?

Mr. Merrigan: Yes, and then owned all of the stock of the Whitney National Bank.

The Court: That is no merger.

Mr. Merrigan: And then owned all of the stock of the Whitney National Bank of New Orleans. And then, Your Honor, Whitney National Bank of New Orleans as it was originally incorporated ceased to exist; it was now part of the Crescent National Bank.

The Court: Who ceased to exist?

Mr. Merrigan: The Whitney National Bank of New Orleans ceased to exist.

The Court: What happened to the Whitney National [33] Bank of New Orleans?

Mr. Merrigan: It transferred all of its assets over to the Crescent City Bank. And then the Crescent City Bank changes its name to the Whitney National Bank of New Orleans. So, we come back to where we have the Whitney National Bank of New Orleans in the corporate form of the Crescent City National Bank owning all of the stock of the holding corporation and the holding corporation owning all of the stock of the Whitney National Bank of New Orleans. And then we go to step four.

The Whitney National Bank of New Orleans, as merged by agreement with Crescent, then in the form of Crescent, takes \$650,000 of its capital funds and puts those \$650,000 into the Whitney Holding Corporation. The Whitney Holding Corporation then uses the \$650,000 it gets from the Whitney National Bank of New Orleans to organize and open the Whitney National Bank In Jefferson Parish, and, in turn, the Whitney Holding Corporation acquires all of the stock in the Whitney National Bank In Jefferson Parish.

The Court: Well, now, let me see if I understand that correctly. The ultimate result still is that the Whitney National Bank of New Orleans owns, am I correct, owns the stock of the Whitney Holding Corporation?

Mr. Merrigan: Yes, Your Honor.

[34] Mr. Bloom: As a matter of fact, Your Honor, that is not correct.

Mr. Seaman: Excuse me, Your Honor. May I speak to that?

The Court: Yes.

Mr. Seaman: Your Honor, the ownership of the holding company stock was only momentary. They gave it to the stockholders of the Whitney National Bank in exchange for the stock which they had formerly had, and the stock——

The Court: What is the present situation? Who owns the stock of the Whitney Holding Company?

Mr. Seaman: The stockholders of the Whitney Holding Corporation, Your Honor, are the former stockholders of the Whitney National Bank in New Orleans.

The Court: Who owns the stock of the Whitney National Bank?

Mr. Seaman: The new——

The Court: Of New Orleans.

Mr. Seaman: The new Whitney National Bank, Your Honor, is——

The Court: I want the present situation as of today.

Mr. Seaman: Yes, Your Honor, I am stating it. The Whitney National Bank of New Orleans is the former Crescent [35] Bank and that is one hundred per cent owned at the present time by the Whitney Holding Corporation. You see, in effect——

The Court: You mean the stock of the Whitney National Bank of New Orleans is owned by the Whitney Holding Corporation?

Mr. Seaman: Yes, Your Honor.

The Court: The former stockholders of the Whitney National Bank own the stock of the Whitney Holding Corporation?

Mr. Seaman: Yes, sir.

The Court: And the Whitney Holding Corporation owns the stock of the Whitney Bank of Jefferson Parish, is that it?

Mr. Seaman: Yes, Your Honor, that is correct.

The Court: Now, it took us pretty long to get at that.

Mr. Merrigan: I am terribly sorry, Your Honor.

The Court: You see, there are occasions when forms of a transaction are quite important.

Mr. Merrigan: Yes, Your Honor, that is true, and I apologize to the Court for not being able to get to that more quickly.

Now, of course, the result of the transaction is, as expressed by the President of the Whitney National Bank in the exhibit which is before the Court, that is, the one entitled

[36] Reorganization Plan and the letter to the stockholders dated October 28, 1961, is that the former stockholders of the Whitney National Bank of New Orleans own all of the stock in the Whitney Holding Corporation and it, in turn, owns all of the stock in the Whitney National Bank in Jefferson Parish.

The Whitney National Bank in Jefferson Parish has been organized without one cent of any new capital contribution.

The Court: But I would like to know what point you are making. Wherein is the illegality? You have been speaking for over half an hour and you haven't yet told me wherein the alleged illegality in this plan is.

Mr. Merrigan: The position of the plaintiffs in this case is that it was admittedly and concededly a violation of the law, a violation of Section 36.

The Court: I do not understand it is concededly a violation of law.

Mr. Merrigan: A direct opening of a branch is conceded to be a violation of Section 36.

We say that this was a plan, a device to circumvent Section 36 of the National Bank Act.

The Court: I see.

Mr. Merrigan: And we refer to cases, Your Honor, in our brief going back as far as Northern Securities Company, where a corporation desiring to circumvent the law formed a [37] holding company, eliminated competition and violated the provisions of the antitrust laws.

The Supreme Court of the United States in a long line of decisions emanating from 1903 forward has said when parties set out by corporate devices to circumvent the prohibitions of a statute the Court will sweep aside the corporate device used and strike down the plan as though it were accomplished directly.

And that is precisely the middle part of this case, the heart of this case. We say you can't do indirectly what you can't do directly. And if you make it complicated enough by corporate devices and corporate plans, the court, a court of equity, should go behind that device.

The Court: Is it your contention that, as a matter of fact, the money of the Whitney National Bank of New Orleans is behind the money of the Whitney National Bank of Jefferson Parish? Is that it?

Mr. Merrigan: There is no money in the Whitney Na-

tional Bank in Jefferson Parish but money emanating from Whitney National Bank of New Orleans.

The Court: Have I correctly stated your contention?

Mr. Merrigan: You have, Your Honor.

The Court: Very well. Now, is the Whitney National Bank of Jefferson County in operation now, or is it [38] awaiting the certificate?

Mr. Merrigan: No, Your Honor, it is awaiting the certificate.

And Your Honor is undoubtedly familiar with the decisions in this Circuit by Judge Youngdahl in *Commercial State Bank of Roseville v. Gidney*, *Comptroller of the Currency*; *Michigan State Bank v. Gidney*, *Comptroller of the Currency*; *Camden Trust Company v. Gidney*, *Comptroller of the Currency*.

The Court: I had one of those cases. I am not sure whether it was the Michigan case or not. I think it was a Pennsylvania case that I had.

Mr. Merrigan: These cases have all been cases—well, the first two, the Michigan State Bank case and the Commercial State Bank of Roseville, involved direct branching attempts, and this Court has uniformly struck down direct branching attempts in violation of Section 36 and has been affirmed by the Court of Appeals.

There has been a case in the Sixth Circuit, which is referred to in our brief, *Wayne National Bank v. Gidney*, *Comptroller of the Currency*, certiorari denied by the Supreme Court of the United States.

The Court: For what proposition are you citing those cases?

Mr. Merrigan: These are cases involving direct [39] violations by the Comptroller of Section 36.

The Court: I do not think you need to labor that point. The question is whether the transaction involved here constitutes a violation: isn't that it?

Mr. Merrigan: That is correct, Your Honor. The question involved here is one, really, of first impression because this is the first time, to my knowledge and my research, and I have seen nothing that the defendant has produced to show that any bank, any national bank with its own funds has sought to avoid the prohibition of Section 36 by taking its funds, putting it into a holding company and opening the bank beyond the parish line.

There was a case here involving the Camden Trust Com-

pany, a New Jersey case, and in that case individual stockholders of a New Jersey bank, I think it was the Haddonfield National Bank, as I recall it, Your Honor, individual stockholders went out and raised \$500,000 of new capital, and then they, as individuals, went over beyond a county line in New Jersey and opened a new bank.

The Court: Is that the case I decided? I know I decided one of those cases.

Mr. Merrigan: No, that was Judge Walsh, I think, Your Honor.

The Court: I decided one of those cases. I have [40] forgotten which one it was.

Mr. Merrigan: In this case, which is relied on so strenuously by the defendant Comptroller here, we had a complete new raising of \$500,000 of capital by the individual stockholders of the Haddonfield National Bank and they went beyond the county line and opened a new bank under a completely new name, the Delaware National Bank. And the Court said, We will affirm that. Although I want the Court to understand that there was a very sharp dissent even on that type of arrangement in the Court of Appeals. We will sustain that because you have new capital, it is not the capital of the old bank being used to open the new branch, it is new fresh capital raised by individual stockholders. And they called that an affiliate.

But in this case, Your Honor, the evidence before this Court will show, in the words of the President of the Whitney National Bank of New Orleans and in the words of the Comptroller of the Currency, the Whitney National Bank of New Orleans said, We do not want an affiliate, it's too awkward, it's too loose, it's too uncontrollable; we want a holding company so that we can approach the branch phase of it. That is the language which is in Defendant's Exhibit 4, which is before the Court. And the Comptroller, in his affidavit before this Court, says that starting back in 1960, I believe it was [41] representatives of the Whitney National Bank came to the Comptroller's office and said we want to get into Jefferson Parish, and they discussed with the Comptroller of the Currency ways and means they might accomplish that purpose. And the Comptroller said, Mr. Berry—representing the Whitney National Bank of New Orleans—you can go into Jefferson Parish by one of two routes: you can have an affiliate or you can try the holding company route. And Mr. Berry said, We don't

want an affiliate—which is the type of transaction involved in the Camden Trust Company case. He said, We want a holding company so that we can approach the branch phase of it.

And that is admitted by the sworn affidavit of the Comptroller of the Currency and by the testimony of the President of Whitney National Bank before this Court on this motion.

Now, these are exhibits (indicating), Your Honor, which have been filed by the proposed intervenor, Whitney National Bank In Jefferson Parish, which will point up one of the essential differences in the Camden Trust case.

(The documents were handed to the Court by Mr. Merrigan.)

Mr. Merrigan: In Camden Trust we had the Haddonfield National Bank opening a bank under the name of Delaware [42] National Bank; I believe that is the correct name. Here we have the Whitney National Bank of New Orleans, with its \$500,000,000 in New Orleans, Louisiana, opening a branch under the name Whitney National Bank, and with little letters under it, In Jefferson Parish.

In other words, in Camden the Court of Appeals said, We will authorize the affiliate route where individual stockholders raise new capital and authorize the opening of the Bank because there is no confusion in names. But here they are using even the same name.

Now, this Comptroller of the Currency before the Court, Your Honor, is charged under Section 1842 of the Bank Holding Company Act with the obligation to tell the Federal Reserve Board whether he approves or disapproves of any particular holding company operation, and the Federal Reserve Board in a letter before this Court has advised that the duty to determine whether something is lawful or unlawful under the National Banking Act rests with the Comptroller in the first instance.

In this case, when the Whitney Holding Corporation went to the Federal Reserve Board and said, Now we have our holding corporation and under the Holding Company Act we want you to approve our acquisition of the stock in the Crescent City Bank—when the Whitney Holding Corporation went to the [43] Federal Reserve Board and asked that Board to approve their acquisition of the shares in the Crescent City National Bank and in the Whitney Na-

tional Bank In Jefferson Parish, the Comptroller of the Currency wrote a letter to the Board, didn't even mention Section 36, didn't mention any of the prohibitions which have gone on for years under the National Bank Act, but simply wrote this letter (indicating) to the Board of Governors of the Federal Reserve Board.

(The document was handed to the Court by Mr. Merrigan.)

The Court: What does it say?

Mr. Merrigan: It simply says that he approves it.

The Court: But is that binding on the Board?

Mr. Merrigan: No, under Section 1842 it isn't binding on the Board, but it authorizes the Board and the Board under such circumstances is authorized then not to hold a statutory hearing in Louisiana which would enable all the parties to come in before the Federal Reserve Board and examine and cross-examine witnesses.

The Court: Well, in other words, the action of the Comptroller is not final, is it? The final action will be the action of the Board.

Mr. Merrigan: No, Your Honor, no. The Comptroller issues the certificate which authorizes the opening of the [44] bank. The Federal Reserve Board action in this case was required for only one reason and one reason alone: the Whitney Holding Corporation couldn't acquire the shares in the Crescent City National Bank or in the Whitney National Bank In Jefferson Parish until it had gone to the Federal Reserve Board and gotten that Board's approval for the acquisition of the shares.

The Federal Reserve Board has no jurisdiction whatever over the authorization of the certification of the bank. And under the Bank Holding Company Act, Your Honor, any review of the Federal Reserve Board decision is limited to a review in the Fifth Circuit Court of Appeals, and you can't make the Comptroller a party to any review of the Federal Reserve Board decision, and we can't make the Federal Reserve Board a party to this proceeding.

The Court: Why not?

Mr. Merrigan: Because by Title 1218, 48 United States Code, the only review of the Federal Reserve Board's decision, under the Bank Holding Company Act, is limited to a review in the United States Circuit Court of Appeals either here in the District or in the Fifth Circuit.

The Court: Then isn't that your remedy?

Mr. Merrigan: No, Your Honor, that isn't my remedy because, as Exhibit C shows here, this is the Comptroller [45] of the Currency's proposed action. He proposes to issue a certificate authorizing the opening of the bank before that order becomes final. And if he does that, under a long line of decisions, the closest to home of which is the Roseville decision by Judge Youngdahl, no one but the Comptroller himself can question—

The Court: I know, but don't cite the decision of another District Court because that is not binding on me.

Mr. Merrigan: I understand that, Your Honor, and I didn't mean to infer that that was, but what I am trying to say is that by a long line of decisions, including the Supreme Court of the United States—

The Court: Anything that the Supreme Court holds and anything that the Court of Appeals holds is binding on me. I have a high regard for each of my colleagues, but that is not binding on me.

Mr. Merrigan: No, I realize that, Your Honor. Of course, Judge Youngdahl's decision was affirmed by the Court of Appeals.

The Court: Then cite the Court of Appeals and not the District Court.

Mr. Merrigan: What I am trying to say, Your Honor, I am really not trying to cite cases to you or against you or anything, I am trying just to say that the rule of law [46] is, and it's been established by a long line of cases, that once the Comptroller issues his certificate no one can contest it, no one can compel its revocation—

The Court: You don't mean that that is the law. You mean that you submit that it is the law.

I am not sure that it is the law. That is your contention, but don't be so dogmatic about it.

Mr. Merrigan: Well, what I mean to say to the Court is that no one can contest it but the Comptroller himself. That is the law as I understand it, Your Honor.

The Court: That is different. I am not so sure that you are right about that.

Mr. Merrigan: I want to say to the Court that there is one other possibility, a quo warranto proceeding by the Attorney General of the United States, and that was discussed in the Roseville decision, too, and was held to be such a speculative remedy—

The Court: That is speculative.

Mr. Merrigan: In other words, if the Comptroller goes ahead, Your Honor, and issues this certificate while the proceedings are pending in the Fifth Circuit Court of Appeals to review the findings of the Federal Reserve Board under the Holding Company Act there will be no remedy whatsoever to cause the bank, which will then be opened, assuming the Fifth [47] Circuit found it to be contrary to law, we could under no circumstances prevent the final result, which is the bank which is already in existence in Jefferson Parish.

The Court: Well, except that it would prevent the acquisition of the stock of the new bank by the holding company, would it not?

Mr. Merrigan: That has been done, as I understand it.

The Court: I say, if the Federal Reserve Board disapproves the transaction the holding company could no longer own the stock of the bank in Jefferson Parish, isn't that correct?

Mr. Merrigan: Well, assuming that would be true, I still say that that isn't the remedy for the plaintiffs, who are not so interested in who holds the stock but in the bank which is opened with the capital of the other bank.

The Court: I see. Well, you have taken quite some time. I hope you will come to a conclusion in short order.

Mr. Merrigan: I will, Your Honor.

The Court: Because I have a long calendar and you have taken almost an hour.

Mr. Merrigan: Well, I am terribly sorry, Your Honor.

The Court: That is all right. I want to give you [48] a full hearing because this is very important, but I hope you will come to a conclusion fairly soon.

Mr. Merrigan: Thank you, Your Honor. I just wanted to bring to Your Honor's attention, if we might, we have sworn affidavits before the Court and, as I say, most of the facts involved in this case are conceded. The amount of checking accounts of the plaintiff Bank of New Orleans, for example, in Jefferson Parish, Louisiana, amount to approximately—

The Court: What has that to do with this case?

Mr. Merrigan: Irreparable damage, Your Honor. \$2,029,000 as of June 21, 1962.

The Court: You don't fear that all your depositors, all

your customers are going to withdraw their accounts and go over to the new bank, do you?

Mr. Merrigan: What we fear is that when this bank, with \$500,000,000 of combined resources, opens its branch or branches, as we call it, in Jefferson and then throughout the State of Louisiana, as it would then be free to do under the ruling of this Court confirming the Comptroller's action in the case——

The Court: All that is before me is this one institution and not throughout the State of Louisiana.

Mr. Merrigan: This is the beachhead not only for [49] this bank, but I say to the Court that this, being a case of first impression, is the beachhead for all national banks similarly situated who have been wanting to branch for years. This is the beachhead. If this succeeds, Section 36 will no longer be a stumbling block; all they have to do is transfer their stock to a holding company and let the holding company open the branch.

So, this is a case of extreme national importance and it is a case which at the present time is a matter of tremendous concern to the President of the United States. This is a copy of his memorandum to the defendant Comptroller (indicating), among others, stating that this entire question of branching, branching through intermediaries, should be studied so that new legislative proposals could be made in 1963.

(The document was handed to the Court by Mr. Merrigan.)

The Court: I don't think the President of the United States ought to be quoted before this Court.

Mr. Merrigan: All right, Your Honor.

The Court: Is this part of the record?

Mr. Merrigan: It is part of the record, Your Honor. This was issued by the White House as——

The Court: Is this in the file in this case?

[50] Mr. Merrigan: Yes, it is, Your Honor.

The Court: I see. Very well. I have to decide this case on the law and I do not think policy ought to be considered by the Court. That is for the Executive Branch of the Government and for the Congress.

Mr. Merrigan: One last thing, Your Honor, I directed Your Honor's attention to Section 1846 of Title 12, which reserved to the states full control and jurisdiction over

bank holding companies and banks. By emergency action of the Louisiana Legislature, since the Comptroller of the Currency announced his purpose to allow this Whitney National Bank to open its facilities in Jefferson Parish, the House of Representatives of the Legislature of the State of Louisiana, by a vote of eighty to sixteen, the Senate of the State of Louisiana, by a vote of twenty-eight to seven, have passed the so-called Uniform State Holding Company Act—

The Court: This has nothing to do with the matter that I have to decide. This is all irrelevant, Mr. Merrigan.

Mr. Merrigan: Yes, Your Honor.

The Court: You know, I am not sitting as a jury or as a committee of Congress. I am confined to the law and judicial discretion.

Mr. Merrigan: I was leading up to the Braeburn decision, Your Honor.

[51] The Court: What about it?

Mr. Merrigan: That was a decision handed down by the Supreme Court of the State of Illinois involving a problem almost identical to the situation here involved. In that case the state legislature by emergency action, such as the one before this Court, had passed this Uniform Act. That case specifically held, Your Honor, that branch banking can result in one of two ways, either directly or through the device of a holding company. And they commented on this particular bill which has now been passed in Louisiana, awaiting the Governor's signature momentarily. They said

The Court: You mean a court commented upon a bill that has not become a law as yet?

Mr. Merrigan: No, they commented on this Uniform Act, Your Honor. And in that case the thing that is important about that case is that the Supreme Court of Illinois specifically found that branch banking in contravention of Section 36 can result in one of two ways, either by direct—

The Court: This is a Federal question, not a question of state law.

Mr. Merrigan: It went to the Supreme Court and the Supreme Court dismissed the appeal for want of a substantial Federal question, and that was, of course, 1846 reserves to the states the right to control these matters.

[52] We have before Your Honor an opinion of the At-

torney General of Louisiana holding that this would be in contravention of state law.

The Court: You know perfectly well that that is not authority. An opinion of the attorney general of a state deserves respect and will receive respect, but that is not an authority on which the Court can base a decision.

Mr. Merrigan: No, Your Honor, I agree, and we don't mean that we are falling back on things that really are not usual. We say that our case can be decided under Section 36, Your Honor.

Thank you very much, and I want to apologize to the Court for the length of this, but it has been difficult to cover.

Thank you.

The Court: That is all right. The Court realizes this is a very important matter.

Mr. Seaman.

Mr. Seaman: If it please the Court, this is a matter of Federal law, Your Honor, and it is our position, very briefly, that this case is controlled by the recent decision in the Camden Trust case, Camden Trust Company vs. Gidney. Mr. Merrigan did refer to it in his argument. It was decided by the Court of Appeals——

[53] The Court: What is the citation? Have you got the book here?

Mr. Seaman: Yes, Your Honor, I do. Would you like me to hand you the book?

The Court: Yes, suppose you hand it up.

(The book was handed to the Court by Mr. Seaman.)

Mr. Seaman: Certiorari was——

The Court: You are referring to Camden Trust Company against Gidney, 301 F. 2d 521, is that the case you are referring to?

Mr. Seaman: Yes, Your Honor. Certiorari was denied May 21st in that case, Your Honor.

The Camden Trust Company case is very similar to the present case. That is the case that Mr. Merrigan discussed, where the management of an existing bank in New Jersey organized a new bank, a different bank at another location, and it was challenged on the ground that that was a violation of the Branch Banking Law.

The Court: I notice that Judge Bastian dissented in that case.

Mr. Seaman: Yes, Your Honor, he did.

The Court: And also that there was a petition for rehearing and that Chief Judge Miller and Circuit Judge [54] Bastian stated that they would grant the petition for rehearing en banc.

Mr. Seaman: It was a hotly contested case, Your Honor. We consider, however, that the facts are so similar to the present case that there is no escape from the conclusion that it is controlling here.

The only real difference, Your Honor, between the facts of the present case and the Camden Trust case is that here the stock of the two banks will be owned by a holding corporation, the Whitney Holding Corporation that was created by this series of transactions that Mr. Merrigan discussed. Whitney Holding Corporation, however, will be the stockholder of the banks, and in the Camden Trust case the stockholders of the two banks were the same individuals. I don't mean to imply that they owned a hundred per cent of the stock because I understand that is not the case, but this group did own over fifty per cent of the stock, and, thus, the two banks became affiliates.

Affiliate relationships in banking, Your Honor, are matters which have been long recognized——

The Court: I am going to interrupt you with a question, Mr. Seaman. How did the Gidney case arise? Was that on a final judgment after a trial?

I see, this was a summary judgment.

[55] Mr. Seaman: Yes, summary judgment was granted, Your Honor. It was in much the same posture as the present case except——

The Court: No, what is before me is a motion for preliminary injunction. There is no motion for summary judgment before me.

Mr. Seaman: That is true, Your Honor, there is no motion for summary judgment.

The Court: I think there is a vast difference.

Mr. Seaman: Well, if I am not mistaken there was also a motion for preliminary injunction in the Camden Trust case, Your Honor, and that was denied at the time that the Government and the intervenor were granted summary judgment. There was an intervenor in that case also, the bank which was seeking the certificate of the Comptroller.

Mr. Merrigan: I don't want to interrupt, but there was a voluntary stay.

The Court: Just a moment. I have heard you at length. I want to give opposing counsel an opportunity to present their argument.

Mr. Merrigan: Thank you, Your Honor. I'm sorry.

Mr. Seaman: Yes, Your Honor, I believe there was a voluntary stay of the certificate also in that case. This is what Mr. Merrigan is referring to. I don't believe, however, [56] those differences are of any real significance to the present case. The decision was based on the proposition, Your Honor, as I understand it, that there was an independent bank about to be chartered in the case and the Comptroller had discretion to charter that independent bank; and that the nature of the independent bank, despite the fact that it was closely controlled, if that is the correct term, at least controlled a majority of the stock by the same people who controlled the other bank, the original bank, that that didn't make any difference and that it was not a branch of the original bank that the management controlled.

It not being a branch, it was, therefore, not in violation of Section 36(c), the Branch Banking Law, which is the main reliance that plaintiffs place here; and, therefore, it being an independent bank, the Comptroller had discretion to issue his certificate, and it was issued in that case.

If it were not for this Branch Banking Law, Your Honor, it is our contention that the discretion in the Comptroller here would be unlimited. This is a matter of agency action, a matter which has been committed to agency action under the Administrative Procedure Act. There is no statutory form of review for the—

The Court: The Camden Trust Company case is a bit different, isn't it? It involved two independent banks [57] each having the same group of stockholders.

Mr. Seaman: Yes, Your Honor, that is the difference. That is true.

The Court: Here you have a holding corporation owning the stock of both banks. Isn't that a situation of a different type?

Mr. Seaman: Yes, Your Honor, it is different. We consider, however, that the difference is not significant.

The Court: Well, I don't know. Isn't it distinct in principle? Well, I will let you answer that question after our usual mid-morning recess.

We will take our usual mid-morning recess at this time.
(Brief recess.)

The Court: You may proceed, Mr. Seaman.

Mr. Seaman: Your Honor, your question was as to the difference between the Camden Trust case and the present case. Your Honor, as I view the Camden Trust case, it was decided basically on the ground that what was involved was an independent bank, a separate bank, which was applying for a certificate from the Comptroller; and because it was separate and for the list of differences that the Court gives there on the second or third page of the opinion, because of those differences it was not and could not be considered a branch, [58] that a branch has to be a part of the parent organization.

The Court: Yes, I understand all that, but there is a very vital difference. There was independent capital in each bank, even though the capital was furnished by the same people. But here you have a holding company that owns the stock of both banks.

Now, I notice that the word subterfuge was used in the Camden Trust Company case and the word evasion, which is not as disagreeable as subterfuge. I am not going to use either of those two terms, but isn't this a means of getting around a prohibition of this statute?

Mr. Seaman: Your Honor—

The Court: There is nothing reprehensible in that. I do not mean to suggest that anything reprehensible was done. But it is clear, is it not, that what the Whitney National Bank was doing was trying to establish what in essence, though not in form, was a branch bank, because it was another bank that it controlled.

Mr. Seaman: Your Honor, subject to what Mr. Monroe will probably wish to say on behalf of the Whitney, I would like to answer that this way: it is true, Your Honor, that the Whitney Jefferson operation is a means used for the Whitney Bank in New Orleans to pursue banking business in Jefferson Parish. I think there can be no real question about [59] that. But that is not the same thing, in my mind, Your Honor, as saying that it is a branch.

The Court: It is clear from the extracts of the testimony that has been read that the bank officials, being confronted with the statutory prohibition, perfectly honestly tried to figure out some other legal way to accomplish what the statute prohibited. Isn't that what this amounts to?

Mr. Seaman: Your Honor, I would say, yes; I believe that is correct.

The Court: I notice this action was filed almost a month ago. The Government hasn't moved, has it, for summary judgment or made a motion to dismiss?

Mr. Seaman: Your Honor, the reason we didn't do that was that we wanted an early hearing on the matter.

The Court: You could have as early a hearing on a motion for summary judgment as you can on a motion for preliminary injunction.

Mr. Seaman: Well, we presented our opposition, Your Honor, on the 20th of June. There was——

The Court: You could have filed a motion for summary judgment at the same time, Mr. Seaman.

Mr. Seaman: Yes, Your Honor.

The Court: What bothers me is this: I don't think I ought to decide this question of law on a motion for [60] preliminary injunction, which is addressed to the discretion of the Court, because this is a pretty important matter.

While if there was a motion for summary judgment, I could decide it. On the other hand, if there are some facts that are to be adduced, possibly the case would have to go to trial.

Mr. Seaman: Well, Your Honor, this is a motion for a preliminary injunction and the denial of such a motion is not a decision on the merits of the case.

The Court: Exactly. Neither is the granting of it. But here is what is bothering me, Mr. Seaman: if I deny the motion for preliminary injunction and the certificate is issued by the Comptroller of the Currency, the bank starts operating; and thereafter, if it should be held that this action was illegal, we would have a pretty difficult situation to unscramble, would we not?

Mr. Seaman: Your Honor, I think the answer to that question is that the remedy of the plaintiffs lies in this case, really, with the Fifth Circuit Court of Appeals now, and that if the Fifth Circuit Court of Appeals were to reverse the Federal Reserve Board, the holding company operation of which——

The Court: Is there anything pending now in the Fifth Circuit Court of Appeals?

[61] Mr. Seaman: Yes, Your Honor, they filed their appeal on June 30th.

The Court: Then isn't that all the more reason why the

Comptroller of the Currency should stop his hand and wait and see what happens?

Mr. Seaman: Well, Your Honor, the issuance of the certificate by the Comptroller of the Currency doesn't have anything directly to do with the proceeding before the Federal Reserve Board.

The Court: Yes, but the minute the Comptroller issues his certificate the bank can open its doors and do business, isn't that so?

Mr. Seaman: Yes, Your Honor; yes, that is true.

The Court: Now, suppose two or three months later there should be a final judgment in this case that the Comptroller of the Currency acted illegally. That would be a pretty sorry situation—well, it would be like trying to unscramble scrambled eggs, wouldn't it?

Mr. Seaman: Well, Your Honor, that would be true now because most of these eggs have already been scrambled. Most of the steps in this reorganization program that Whitney has undertaken have already been completed.

The Court: But is the bank operating?

Mr. Seaman: No, it is not operating.

[62] The Court: That is the point. The bank has not opened its doors yet.

Mr. Seaman: No, Your Honor, but it expended a considerable amount of money, as I understand it, getting ready to open its doors and it has gone pretty far.

The Court: I should think that the Comptroller of the Currency would want to wait until there is an adjudication in this action.

Mr. Seaman: Well, the Comptroller of the Currency, Your Honor, feels that the operation which is proposed here is lawful, that this bank has a right to open its doors.

The Court: Yes, but he may be mistaken, you know, because the question is a close one.

Mr. Seaman: Yes, Your Honor.

The Court: I am very strongly of the opinion that on a motion for preliminary injunction the Court ought not to express an opinion on the merits. The only question is whether the status quo should be continued.

Mr. Seaman: Well, it seems to me, Your Honor, that the answer to that question is whether or not the plaintiffs have a reasonable possibility of succeeding in the action.

The Court: Yes, and it does seem to me there is a substantial and reasonable doubt here as to the legality of this—

[63] Mr. Seaman: Your Honor, our position, of course, is that there is not a substantial doubt about it. For one thing, the Camden Trust decision also, Your Honor, because the bank holding company operation is not a new creature that they have just thought up. This is a regulated bank holding company, Your Honor.

The Court: But isn't this true, Mr. Seaman, that if this device is legal—and I am not going to express an opinion as to whether it is or is not, at this time—but if this device is legal, then you might as well repeal Section 36(c)?

Mr. Seaman: No, I would say, Your Honor, that that is not the case. 36(c) applies only to branches.

The Court: I understand. But it would become a dead letter because any bank that wanted to establish a branch would create a holding company as an intermediary.

Mr. Seaman: Yes, Your Honor.

The Court: Now, maybe that is legal.

Mr. Seaman: There would be certain differences, however, in the operation. One of the differences is that the independent bank under the holding company operation has its own capital, has limitations on the loans that it can make, it would have its own directors. None of these things are true of a branch, Your Honor. A branch has the lending powers [64] of the parent. A branch doesn't have directors, a branch doesn't have its own separate officers.

The Court: There are differences. The only question is whether the differences are sufficient.

Mr. Seamen: Your Honor, I did want to speak briefly about this holding company operation.

Your Honor, the Bank Holding Company Act of 1956 is the statute under which this holding company is proposing to operate. That statute, Your Honor, is administered by the Federal Reserve Board and not by the Comptroller of the Currency. And this holding company which has been set up is a Louisiana corporation. Your Honor, these questions have, for the most part, been gone into already before the Federal Reserve Board. That is the remedy, as we see it, that plaintiffs should be pursuing.

The Federal Reserve Board considers—has ruled that these transactions are legal. An appeal is pending from the Federal Reserve Board. And the Federal Reserve Board supervises bank holding companies, and this—

The Court: Isn't that all the more reason for maintain-

ing the status quo until the appeal before the Fifth Circuit is decided?

What is the status of that appeal?

Mr. Seaman: The appeal was just filed, Your Honor. [65] It was filed last Saturday.

The Court: How soon can it be heard, do you know?

Mr. Seaman: I really don't know, Your Honor, but I would suppose it would be some months. I don't know, though.

The Court: How long has this matter been pending before the Comptroller and before the Board?

Mr. Seaman: Well, I believe the Comptroller indicates in his affidavit that it's been pending since November, 1960.

Mr. Bloom: October, 1960.

Mr. Monroe: Since June, 1961.

The Court: Since when?

Mr. Seaman: June, 1961, Your Honor. Mr. Monroe, the attorney for the Whitney Bank, has been following the matter all that time. There were preliminary conversations with the Comptroller before the decision in October of 1961, which I guess was the first formal decision by the Comptroller in this matter.

Your Honor, I hope you will hear Mr. Malcolm Monroe at this time. He is——

The Court: Of course. I will hear everybody who is entitled to be heard. I am not cutting you off, Mr. Seaman. You may proceed.

Mr. Seaman: Mr. Monroe is the attorney for the [66] Whitney Bank and they do have the real interest in this case, in a sense. They are the ones who are——

The Court: I don't doubt the fact that the Whitney Bank has a real interest in the matter, of course.

Mr. Seaman: Yes, Your Honor. The Bank Holding Company Act of 1956, Your Honor, as I understand, had as one of its objectives the creation of this kind of a system. These bank holding companies operate all over the United States. There are a number of them. They hold banks—some of them hold banks across state lines. They operate, many of them——

The Court: Let's not go into all these ramifications. The question before me is a narrow one: should I stay the status quo until the merits of this action can be determined. That is the only question for me to decide on this motion.

Mr. Seaman: Well, Your Honor, our position on that is

that plaintiffs do not have a case which deserves that kind of relief at this point. The case is controlled by the Camden Trust case. The device that is being used here is the holding company device, which is a recognized device, which is controlled by the Federal Reserve Board. The plaintiffs have a remedy, which they are pursuing, before the Federal Reserve Board. It is an adequate and complete remedy. The Court of Appeals, if it reverses——

[67] The Court: That is all the more reason for maintaining the status quo, I think.

Mr. Seaman: Well, Your Honor, if the Court lacks jurisdiction to proceed because they have a remedy before another body, it would seem to me that the other remedy should be pursued rather than that this action, of which we say the Court lacks jurisdiction——

The Court: There are two independent steps here. One is the action of the Federal Reserve Board; the other is the action of the Comptroller. And I think the plaintiffs, if they have any rights at all, can pursue either or both remedies.

Mr. Seaman: It's quite true, Your Honor, that they would be entitled to pursue any remedy that they wanted to. The thing that strikes me, though, is that this remedy, this suit against the Comptroller is one which has no justification, that they are seeking to enjoin the Comptroller on a basis which on its face has no merit; and it has no merit, Your Honor, because this is not a branch. And since it is not a branch, the certificate should issue. The Comptroller has discretion to issue that certificate. The fact that there is this other proceeding pending points up the fact that that is where their remedy lies.

Your Honor, I think if I may, I would like to have [68] Mr. Monroe speak to you at this time on behalf of the Whitney Bank.

The Court: Very well.

Mr. Monroe: May it please the Court, I am Malcolm Monroe of the New Orleans Bar, Louisiana Bar, and I represent the Whitney Bank.

The Court: Well, the technical name is Whitney National Bank of New Orleans, is that it?

Mr. Monroe: Whitney National Bank of Jefferson Parish, a completely new bank organized and ready to do business and seeking to do business, with completely independent stockholders.

The Court: They are the intervenor in this case?

Mr. Monroe: The intervenor in this case.

I am also counsel for the Whitney National Bank of New Orleans and the Whitney Holding Corporation, and I have handled the proceedings since the original application with the Comptroller, which was in June of 1961 and which was approved by the Comptroller on October 14th of last year—October 18th, subject to the approval of the Federal Reserve Board.

I handled the proceedings before the Federal Reserve Board, which were filed in July of last year and which there was an advertisement for a public hearing, at which the [69] plaintiffs did not appear. That hearing was held here in Washington, published in the Federal Register on January 17th. On January 17th statements were taken from all parties in interest before the full seven-man Board. We did not hear from the Board until May 3rd. The Board gave a ruling in favor of the Whitney Holding Corporation going forward.

The Comptroller then gave his final approval.

The Whitney Bank was reorganized into a holding company and a wholly owned subsidiary, and the Whitney Bank In Jefferson Parish was formed, its stock put up, subscribed, money put up, and it has been ready to do business, open its doors, except for these injunctive proceedings.

Now I'd like to get right to the point because I don't think it's come out all day, the express question that you have been asking Mr. Seaman.

Contemporaneous—we have proceeded with this program of banking which is done all over the country where there are like, similar statutes preventing branch banking. That is what holding company banking is. I would like to come back to that for a moment. But the point you are asking, why not maintain the status quo: this proceeding for injunctive relief, which was filed back on June 9th, was filed five days after a bill was introduced into the Legislature of Louisiana. We had been proceeding for two years under the law of Louisiana [70] as it was, studying this matter, with our final applications over a year ago. The Legislature was in session and on the last day of the legislative session this bill was introduced, and the following Saturday, Friday or Saturday, this injunctive proceeding was filed; a temporary restraining order or an equivalent, a

consent restraining order was obtained, and we have not been able to be heard until today. That was June 9th and this is almost thirty days later.

This is the first time we have been able to point out to the Court why it is important that the status quo not be maintained. That statute, as of last Wednesday, when we were before Judge Hart and we were resisting very strenuously that the matter should not be continued, he said to me, What can happen between last Wednesday and this Friday? I said, This statute is before the Legislature and I don't—

The Court: What statute is before the Legislature?

Mr. Monroe: The statute in Louisiana that will make it a crime, punishable by imprisonment, for a bank holding company subsidiary to open its doors for business, whether or not the Comptroller has issued a certificate. Even though he has issued the certificate it will be a crime, when that statute becomes law, to open our doors.

That statute since last Wednesday has been rushed through both Houses of the Legislature and as the last order [71] of business on July 4th that statute was passed by the Upper House, with this punitive clause in it, aimed at the Whitney National Bank situation, because it is the only corporate holding corporation in Louisiana; only can it apply to this particular Whitney Bank In Jefferson Parish. It has passed both houses and both houses recessed. It cannot become law until some time on Monday. On Monday—

The Court: I am not going to rush the matter in order to prevent an action on the part of the Louisiana or any other state legislature. I think, then, with all due respect to the legislature, I ought to maintain the status quo.

Mr. Monroe: I would like to disagree with you.

The Court: This is an argument that is addressed to the Court's discretion that would be in favor of granting an injunction.

Mr. Monroe: Well, may I talk about that, because I certainly feel quite strongly the other way.

That means that this Court is being used, when I have not been able to be heard for a period of thirty days while the law of Louisiana changes and when there is no palpable reason to deny—when we have proceeded under the cases and under the legislative history of this Act as a perfectly legal transaction. We come right up to opening our [72]

doors, and the plaintiffs in this case are the people who introduced the legislation in court, our competitors, and are changing the law after we have spent a year on this proposition, and after we have totally reorganized the Whitney Bank, of which this is a part and a brand new organization.

If we are frozen by this Court from doing what would be legal, why, under those circumstances we are faced with an entirely new criminal statute in Louisiana, when you consider it.

Now, I am in court, the Whitney Bank In Jefferson is in court, and the plaintiffs can under no circumstances be damaged because the cases they cite are not applicable where the Whitney Bank, the bank proposing to open, comes in and consents, and we do consent to return the certificate completely if the position of the plaintiff is maintained. It's obvious that we are in court, you have jurisdiction over us. We do not, though, want to be faced with a new criminal statute that was not on the books when we incorporated over a month ago and when our plans—a year ago our applications were filed. We think it is totally unfair when we for a year have been working with the Federal Government on a completely open and aboveboard matter.

I went to the attorneys for the Comptroller and the attorneys for the "Fed" with the President of the Whitney [73] Bank last June and we said the first thing we want to know is whether this is legal. The Whitney Bank is a very dignified old institution in the community.

The Court: There is no doubt about that. The Whitney Bank is well known in banking circles.

Mr. Monroe: We went to the attorneys and the first thing they said, it was the legal staff of both those Government agencies—

The Court: You know, you are referring to matters that are not in the record before me, Mr. Monroe. I really want to suggest that to you.

Mr. Monroe: Excuse me, Your Honor. I am saying it is in the record because Mr. Saxon's affidavit—

The Court: I mean the fact that the legislature may pass a statute on Monday which would make it a crime for you to do what the Comptroller might permit you to do, I don't think I ought to consider it. It is not in the record, is it?

Mr. Monroe: It is the meat of this case, Your Honor, and it is put in the record—

The Court: But if it is the meat of this case, then I ought to maintain the status quo because I don't think I ought to take time by the forelock in order to forestall an action of a state legislature.

[74] Mr. Monroe: It's not forestalling, it's allowing us to do something we were entitled to do a month ago and when we have not been able to get before this Court.

The Court: There is a big question whether you are entitled to do it. That is the whole question in this case. You are begging the question.

Mr. Monroe: Yes, but on the issue of preliminary injunction the question is whether the plaintiff would be damaged, and I am saying to you, Your Honor, in all due respect, that we are here and the cases he relies on that say he cannot take the certificate back are cases where they say that he has no standing in court. I am willing to waive that standing in court so that I can proceed under the law that we operated under. I have stated that and will file an affidavit to do that. He cannot possibly be damaged. He doesn't operate in this area. He is my competitor in New Orleans. And if he is not damaged, how can this Court completely deny me an opportunity to operate legally where I have worked for a year to do so? And the only reason I am not in business is because I haven't been able to get before this Court. The suit was filed on June 9th and today—

The Court: That is pretty quick. That is much faster than most administrative agencies operate.

Mr. Monroe: Well, I understand, but a restraining [75] order is a very harsh thing, Your Honor, and it really is harsh in the equities of the people before you. You are asking us not to do something that—you are telling us that we can't do something that is legal, and while you are holding it pending final decision the whole law is to be changed.

The Court: Mr. Monroe, please do not tell me that I would prevent you from doing something that is legal. If I would prevent you from doing it it is because I have a doubt as to whether it is legal.

Mr. Monroe: I agree with Your Honor, but there is a doubt as to the legality and we presumptively have gone along in a legal way when we have been through two agencies in a completely open hearing. There is not an argument that has been made today that wasn't made to

the "Fed" in open hearing. There is not an argument that will be made that won't be made to the Fifth Circuit. The Fifth Circuit has complete control over this situation, and the Fifth Circuit if it finds—the Fifth Circuit is completely authorized to make us divest ourself of the stock.

Now, let me understand this situation. This money that was made was taken from undivided profits and an unallocated reserve account and it was completely the stockholders' money. They could have put their hands in their pockets. Over ninety per cent of the stockholders voted to take their surplus [76] funds and carry this transaction out in open meeting called according to law. Every law was complied with all the way through.

Now, I would like to point out that, therefore, they could have done this in another way just as easily and this matter can be dissolved and it will be put in the hands of the stockholders and it will be just exactly the same thing as the Camden case.

Let me point out that this matter has been passed on in the Billings case, which is cited in our brief, in Montana. Let me point out that there holding companies—

The Court: What is the Billings case?

Mr. Monroe: First National Bank v. First Bank Stock Corporation, United States District Court Montana, 197 F. Supp. 417.

The Court: Did that go up to the Court of Appeals?

Mr. Monroe: It is on appeal at the moment. I am citing it because it sets forth very well the point I wish to make.

This precise point was made to Congress in 1955, it has been in 1953. When the Holding Company Act was presented to Congress there was presented with it a bill to put the provision in the Act that holding companies could not—subsidiaries of holding companies could not be formed in [77] violation of branch banking of the state in order to make—that would be the same parallel legislation as 18(c) for actual branch banking. That matter was discussed in my brief which is on file. That matter was discussed at great length and the Senate took the provision out of the bill. The report of the Senate committee on the bill that was adopted:

"The committee decided against the inclusion in the Holding Company Act of a provision in the bill that would automatically apply state laws concerning branch

banking to bank holding company operations. The purposes of branch banking laws are not identical with the purpose of this bill to control bank holding companies. Moreover, branch banking is mostly conducted by the use of depositors' —"

The Court: Please do not quote at length.

Mr. Monroe: I'm sorry.

The Court: You see, I want to make it clear to you, gentlemen, that I am not going to pass upon or express any opinion as to the legality of this transaction on this motion. I do not think I should.

Mr. Monroe: All I am——

The Court: The only question I have to decide is whether I should maintain the status quo until the matter can [78] be decided.

Mr. Monroe: To that express point, Your Honor, I comment that if the status quo is maintained I will be irreparably injured in that I will never be able to open unless that statute at some long future date is repealed. I can never be put back in the same position. I have proceeded in good faith for the last year. I will never be able to be put back in that position if this injunction is maintained.

On the other hand, the plaintiff can't really show any damage and he will not be damaged, if I open my bank, irreparably. There is another bank in Jefferson Parish right now that is in the same situation except for the holding company, it's owned by common stockholders, the National Bank of Commerce. Our biggest competitor in New Orleans is in Jefferson Parish right now and has been there five years under the name of the National Bank of Commerce in Jefferson Parish. It has five separate branches in Jefferson Parish, and that is the reason the Whitney Bank had to follow its competitors, because New Orleans is moving that way. And the National Bank of Commerce, a bank considerably bigger than these plaintiffs, has five banks there under the same name. The Comptroller understood that.

Now, if you maintained the injunction today and we set this up for a hearing on the merits—and you asked why [79] we did not urge, when we came into this case, that a motion immediately was set for summary judgment. It is because of the importance of the injunction to us in con-

nection with this steamroller legislation aimed directly at this particular institution. Today if we are held under this injunction we will never be able to be put back in the same position.

I repeat that I am in court. The permanent injunction can certainly take me out of Jefferson Parish.

The Court: Beg pardon?

Mr. Monroe: The permanent injunction can certainly stop me from operating, and I am perfectly willing—

The Court: The matter is not before me on an application for a permanent injunction.

Mr. Monroe: What I mean is that the application is before you.

The Court: What is before me is an application for a preliminary injunction, not a permanent injunction.

Mr. Monroe: That is true, Your Honor, but I would like to point out what the request is, just what is before you. May I read the prayer?

The Court: No; the only thing that is before me is a motion for a preliminary injunction.

Mr. Monroe: Yes, but injunction against what?

The Court: That is not a permanent injunction. [80] That would be an injunction until the case can be tried, if I grant it.

Mr. Monroe: I'm sorry, Your Honor. Before you is the request for a preliminary injunction and a permanent injunction, but the preliminary injunction restraining the Comptroller of the Currency from issuing to the Whitney National Bank or the Whitney National Bank In Jefferson Parish a certificate of authority authorizing the establishment of a new branch bank.

The Court: Yes, I know, but it is a preliminary injunction, not a permanent injunction.

Mr. Monroe: Yes, excuse me, it is a preliminary. But if that preliminary injunction issues, we are not establishing a new branch bank. All they have said is an injunction against establishing a new branch bank. If you grant it according to the letter of their prayer, they have not—I wonder if we are not entitled to go ahead and open in accordance with their prayer and I don't know whether we are entitled to have an injunction that is broader than their prayer, if you will read the prayer on the last page in the petition.

The Court: No, the motion for preliminary injunction is a motion for a preliminary injunction to restrain the defendant from issuing a certificate or certificates [81] authorizing the establishment and operation by the Whitney National Bank of New Orleans, the Whitney Holding Corporation of New Orleans, and/or Whitney National Bank of Jefferson Parish, of a new branch bank or banks.

Mr. Monroe: That is correct, Your Honor. That is not what we are doing.

The Court: I see. Well, then, you would not be harmed by an injunction, would you?

Mr. Monroe: Well, that is perfectly true, but it doesn't meet the issues square on. Obviously we don't want to have a misinterpretation of what the position—

The Court: Gentlemen, I have given too much time to this matter. I think I have the issues perfectly clear in my mind.

Did you wish to add anything, Mr. Seaman?

Mr. Seaman: Yes, Your Honor, I think I have something that may be of some importance. I believe I have something that should be said here.

The Court: You can have two or three minutes. I thought you finished your argument.

Mr. Seaman: Very short. This is not an argument, Your Honor. I want to point out that the temporary restraining order expires today and the terms of it only go to today. If Your Honor is going to take the matter under advisement

[82] The Court: I am not.

Mr. Seaman: Excuse me, Your Honor.

The Court: I very rarely take matters under advisement. That is why I sometimes allow longer time for argument, because I like to decide questions at the end of the argument.

But I do want to ask you just one question, Mr. Merrigan. There is just one point that impresses me that Mr. Monroe made. How are you damaged by this?

Mr. Merrigan: There are three plaintiffs before this Court. Two of the plaintiffs before the Court are banks which, by state law, are strictly limited to operations wholly within the City of New Orleans.

The Court: Yes.

Mr. Merrigan: And, yet, very, very substantial parts of

their business, running into millions of dollars a year, emanate from Jefferson Parish, Louisiana.

The Court: I see. Very well. Now, then may I ask you this. While perhaps I should not concern myself with this because I am not going to impugn the motives of the actions of a legislature of a sovereign state, but were your clients instrumental in trying to get this legislation through and rush it through to make it a criminal offense to open a bank? It seems to me that is most extraordinary.

[83] Mr. Monroe: May I show you the newspaper—

Mr. Merrigan: Just a moment, Mr. Monroe. You made the charge; I would like to be heard.

The Act which has been before the Louisiana Legislature is the Uniform State Holding Company bill, which was passed in New York, New Jersey, Illinois, Indiana. It was introduced by—

The Court: I understand. Mr. Monroe states that that Act would make it a criminal offense to open the bank even if the Comptroller of the Currency grants the certificate. Is that so?

Mr. Monroe: May I answer that, Your Honor?

Mr. Merrigan: Your Honor, I don't think that the Act was meant to make it a criminal offense for them to open.

The Court: Is there a criminal provision in the legislation? You know, Mr. Merrigan, I am used to getting direct answers to my questions.

Mr. Merrigan: Yes, there is a criminal—it says, Your Honor, that upon any bank—

The Court: Let me see that criminal provision.

(The document was handed to the Court by Mr. Merrigan.)

Mr. Merrigan: It's at the bottom, Your Honor.

That legislation, Your Honor, was supported by the [84] State Banking Commissioner of Louisiana. That legislation was passed by the House of Representatives of Louisiana by a vote of eighty to sixteen and by its Senate by twenty-eight to seven. It was sponsored by the—

The Court: Were your clients instrumental in getting it through?

Mr. Merrigan: To the extent that they are members of the Louisiana State Bankers Association, which supported the bill.

The Court: I see.

Mr. Monroe: Your Honor, I would like to make a statement on that.

The Court: Yes, I will hear you.

Mr. Monroe: The President, Mr. Merrigan, of the plaintiff bank, Bank of New Orleans, advised us that he was going to introduce this bill. This bill was prepared by the attorneys sitting—it is the Uniform Act, but the Uniform Act does not have this amendment that I have read.

The Court: What is the amendment to the Uniform Act?

Mr. Monroe: The amendment is the one that makes it criminal to open.

The Court: Show me the provision.

Mr. Monroe: Here it is. It's part of the [85] plaintiffs' case, that Sub-section 5 down at the bottom.

(The document was handed to the Court by Mr. Monroe.)

Mr. Monroe: May I say this Uniform Act is not the normal Uniform Act you are familiar with, Your Honor. It's not adopted by anybody. It's just named that by a group of people.

Mr. Merrigan: I don't suppose Mr. Monroe would want to have this Court believe he hasn't had anything to do with those legislative proceedings, either.

The Court: I do not think I should engage in an unseemly race with a state legislature.

Mr. Monroe: We therefore don't believe that you should participate with it and keep us unable to go forward.

The Court: I am surprised at that provision.

I think, gentlemen, I have heard enough.

Mr. Monroe: I would like to point out to Your Honor that we have many hundreds of thousands of dollars invested in the preparation of this thing.

The Court: I understand all that. All banks have.

Mr. Monroe: And we will never have the opportunity to open this bank if the injunction is issued.

OPINION OF THE COURT

The Court: Without expressing any opinion as to the legality of the proposed action the Court, nevertheless, [86] is of the opinion that a sufficiently debatable question is presented to make it desirable to maintain the status quo until the action can be determined on the merits.

Accordingly, the motion for a preliminary injunction is granted.

Counsel will please submit a proposed order and proposed findings of fact and conclusions of law. In preparing the findings of fact and conclusions of law counsel will bear in mind, please, that the Court will express no views on the legality of the proposed action which it enjoins. It is basing its present decision merely on the premise that there is a sufficiently debatable question.

Mr. Merrigan: Your Honor, would you continue the restraining order in effect until we can submit these papers?

The Court: I will continue the restraining order until Monday so as to give you an opportunity to prepare the papers.

Mr. Seaman: Your Honor, there is the question of a bond. We would like to have——

The Court: What about that? I suppose that can be determined when you submit your order.

Mr. Seaman: All right, Your Honor.

Mr. Monroe: Your Honor, I won't be here at the time, I don't believe. Would you hear any discussion of that?

[87] The Court: Beg pardon?

Mr. Monroe: I am wondering, sir, if it wouldn't be well to discuss that today.

The Court: No, I will discuss it at the time you submit your order because I have got other matters waiting. You may come before me at 10 o'clock Monday morning with your proposed order.

Mr. Merrigan: Thank you, Your Honor.

(Thereupon, the hearing stood concluded.)

CERTIFICATE OF REPORTER

I, Gerald Nevitt, Official Court Reporter, certify the foregoing 87 pages constitute the official transcript of proceedings in the stated action before Judge Holtzoff July 6, 1962.

In witness Whereof, I have affixed my signature this 13th day of July, 1962.

GERALD NEVITT.

Filed July 24, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PLAINTIFFS' OPPOSITION TO DEFENDANT COMPTROLLER'S MOTION FOR SUMMARY JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT IN THEIR FAVOR AGAINST DEFENDANT COMPTROLLER.

Come now the plaintiffs and intervening plaintiff herein, who oppose defendant Comptroller's motion for summary judgment herein, and who cross-move for summary judgment in their favor against defendant Comptroller on the following grounds:

1. There is no genuine issue as to any of the material facts upon which plaintiffs and intervening plaintiff rely in support of their cross motion, and

2. Plaintiffs are entitled to summary judgment as a matter of law.

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Filed July 24, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF CROSS-
MOTION FOR SUMMARY JUDGMENT

Plaintiffs, in support of their cross-motion for summary judgment herein and pursuant to Rule 9(h) of the Local Rules of this Court, hereby set forth a statement of the material facts in support of their cross-motion for summary judgment and contend there is no genuine issue as to these facts so stated:

1. The Whitney National Bank of New Orleans is the largest bank by far in the State of Louisiana. It is one of the largest financial institutions in the entire southern portion of the United States (*Defendant's Ex. 5, pg. 4*).

2. For approximately 79 years, Whitney has operated banking offices and facilities wholly within the City of New Orleans and Parish of Orleans, Louisiana (*Complaint, Para. 7; Answer of Intervening Deft., Para. 7*).

3. Through these operations, limited by law (both Federal and State) to the parish (i.e., county), in which Whitney has its main office (Orleans Parish), Whitney has grown to a position of dominance where it possesses—

approx. \$500,000,000.—in resources

approx. 13,835,000.—in undivided profits

approx. 27,200,000.—in its surplus account

approx. 39%—of the total deposits in *all* banks in
Orleans Parish

approx. 44%—of all deposits of individuals, partnerships and corporations in the Parish.

(*Answer of Intervening Deft., Para. 7; Deft's Ex. 4, pg. 13*)

4. In fact, Whitney controls and enjoys more deposit and loan business than the second and third largest banks in New Orleans combined (*Defendant's Ex. 5, pg. 18*).

5. Furthermore, it enjoys at its banking facilities in New Orleans, deposits of individuals, partnerships and corporations emanating from the east bank of the Mississippi River in Jefferson Parish, Louisiana (i.e., beyond the limits of Orleans Parish), in an aggregate amount exceeding 30% of such deposits held by *all banks* having their head offices in the same area of said Jefferson Parish (*Defendant's Ex. 5, pg. 7*).

6. Under 12 U.S.C. §36(c) and the supporting law of Louisiana, a bank may not establish branches outside of the parish in which its head office is situated (a Louisiana "parish" is comparable to a "county" in other States). The boundaries of Orleans Parish are coterminous with the boundaries of the City of New Orleans, and consequently, banks situated in New Orleans (including national banks) may not establish branches beyond the City limits. (*Defendant's Ex. 5, pg. 5*).

7. For a long period of years, Whitney National Bank of New Orleans has been desirous of opening new branch bank facilities in Jefferson Parish, Louisiana, beyond the limits of New Orleans. It has carefully studied all of the means whereby it might avoid the prohibiting national and state statutory prohibitions against such branching, and finally decided to try a "holding company approach" (*Defendant's Ex. 4, pgs. 6-9; Plaintiffs' Ex. B, pg. 2*).

8. The President of Whitney National Bank of New Orleans stated in testimony before the Federal Reserve Board (*Defendant's Ex. 4, pgs. 6-9*):

"The 'parish' in our state is equivalent to a county.

"Under present laws in our state, the Whitney is not permitted to establish branches outside the Parish of Orleans.

"There is a rapidly growing industrial area in adjoining Jefferson Parish upriver from Orleans. . . . The industrial development, in the form of large plants, more or less extends upriver on both sides to Baton Rouge, about 80 miles. . . . There is, therefore, good reason to look forward to continued industrial growth along the river with a concentration of small industries in Jefferson Parish. . . .

"The management of the Whitney National Bank has been studying and weighing alternative methods of

entering Jefferson Parish . . . and to participate in the further growth of that area. . . .

"The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution, provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, *by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company.*

"The Comptroller of the Currency has concurred in a program which has the effect of putting the ownership of the present Whitney National Bank stock into the Whitney Holding Corporation, through this Crescent City National Bank that was mentioned, *and to the establishment of the Whitney National Bank in Jefferson Parish with funds from the present Whitney National Bank. . . .*

"The Comptroller's action, however, is subject to the approval of this Board of the application of the Whitney Holding Corporation *to establish the wholly owned Jefferson Parish subsidiary.*" (Emphasis supplied.)

9. The President of the Whitney National Bank of New Orleans also testified as follows before the Federal Reserve Board (*Defendant's Ex. 4, pg. 23, 24*):

"If branch banking were permitted in Jefferson Parish, I wouldn't be here because it would be much simpler to have it by way of a branch. . . . But that is not possible. We see no signs of it coming about by legislative action. . . . As I say . . . *we have been unwilling to go with an affiliate which we couldn't hold onto necessarily.*

"It doesn't become a part of our organization; it is just sort of hanging loosely. You have these conflicts of interest and it is awkward.

"*The thing that makes this (the holding company approach) interesting to us is the ability to approach the branch phase of it. . . .*" (Emphasis supplied.)

10. In November, 1960, the said President of Whitney National Bank of New Orleans visited the Deputy Comptroller of the Currency to discuss ways and means by which

the Whitney National Bank of New Orleans might be able to enter Jefferson Parish. (*Defendant Comptroller's Affidavit of June 20, 1962 herein, pg. 2*)

11. He returned to the Comptroller's office in Washington in June, 1961, bringing with him the attorney for the Whitney National Bank. (*Defendant Comptroller's Affidavit, pg. 2*)

12. At the last mentioned meeting, the following is stated to have taken place (*Defendant Comptroller's Affidavit, pgs. 2, 3*):

"... the Whitney National wished to explore with the Comptroller whatever ... means were available for ... expansion into this ... area ... The formation of an affiliate bank was discussed and the formation of a holding company also discussed. The bank management felt that a holding company which would own 100% of the stock of both the old bank and the new bank would be preferable to the formation of an affiliate of which the controlling stock would be held by the same persons who control Whitney New Orleans, but which, in view of the wide stock distribution of Whitney New Orleans, would invariably have a minority of stockholders who did not own stock in both banks. The existence of the minority stock interest in each bank, which did not hold corresponding shares in the other, was considered by the Whitney management to be an undesirable situation, because it could conceivably hamper the most efficient and effective day-to-day operation of the two banks. Since the same group would be managing both banks, it was thought that situations could arise in which it would be impossible for the interests of two different groups of minority stockholders to be fully protected. *For this reason, the Whitney management ... elected to use a holding company for the purpose of establishing a ... bank in Jefferson Parish.*" (Emphasis supplied.)

13. Having obtained from the Comptroller an informal *ex parte* approval of its desire to expand across parish lines into Jefferson Parish, the Whitney National Bank thereupon set into motion a series of intricate corporate maneu-

vers to accomplish indirectly that which was admittedly unlawful to accomplish indirectly, i.e., Whitney's expansion into Jefferson Parish (*Defendant's Ex. 6; Plaintiff's Ex. B*).

14. Although complicated in execution, these corporate maneuvers were simply designed to draw funds from the Whitney National Bank of New Orleans, with which to establish a completely controlled banking facility in Jefferson Parish (*See Defendant's Ex. 6*):

First: With \$350,000. of its capital funds, Whitney National Bank created Whitney Holding Corporation, a corporation organized under the laws of the State of Louisiana.

Second: Solely with the \$350,000. in funds contributed by Whitney National Bank, the Whitney Holding Corporation organized Crescent City National Bank (Crescent) to which defendant Comptroller agreed to issue a national bank charter, knowing full well that Crescent would exist in name only and would never itself engage in a banking business.

Third: Whitney and Crescent, which latter entity never actually operated for an instant as a national bank (and Whitney Holding Corporation), entered into a consolidation or merger agreement, merging Whitney National Bank into Crescent. The name of the merged bank was then immediately changed back to Whitney National Bank of New Orleans.

Fourth: Whitney National Bank of New Orleans shareholders surrendered their stock for cancelation and accepted, in exchange, Whitney Holding Corporation shares, dissenting stockholders, if any, being eliminated by the purchase of their shares under provisions of the National Banking Act.

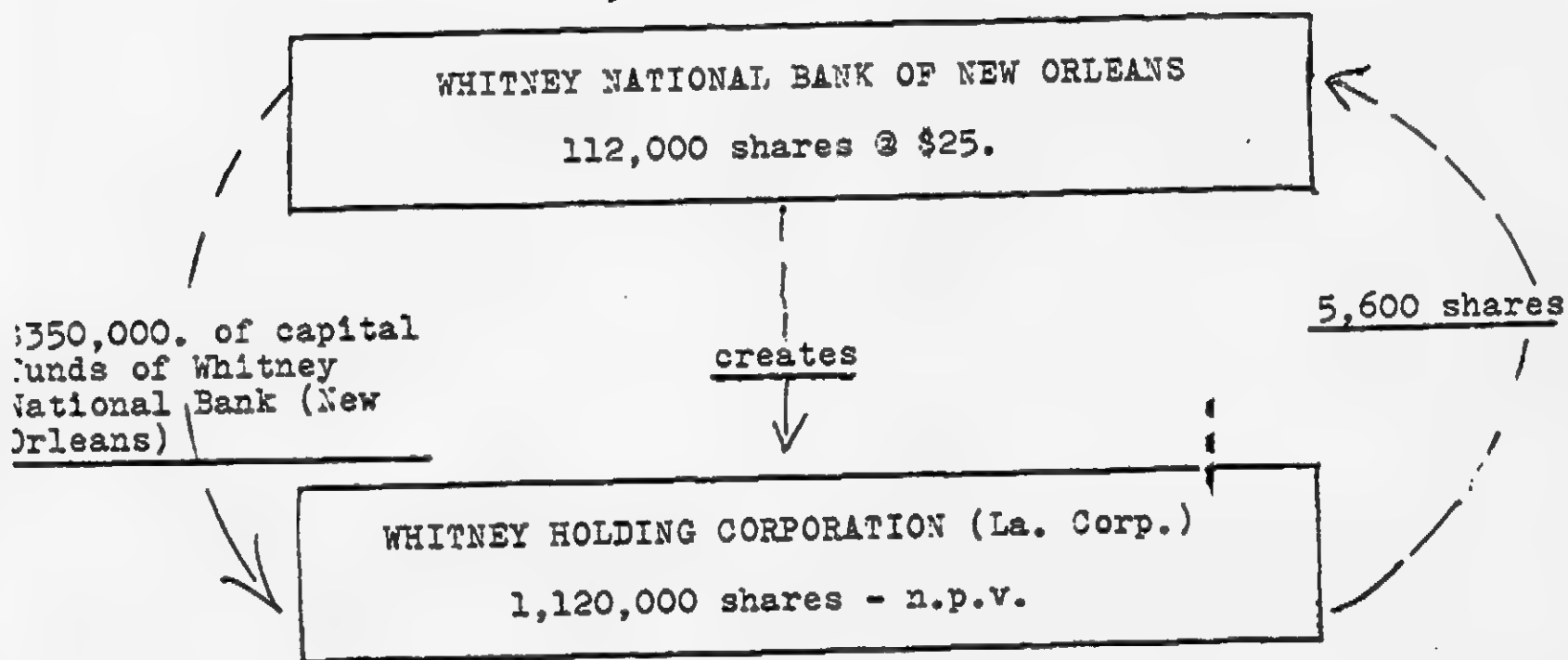
Thus, Whitney Holding Corporation owned 100% of the stock of Whitney National Bank of New Orleans, and the stockholders of Whitney National Bank of New Orleans owned 100% of the stock of Whitney Holding Corporation.

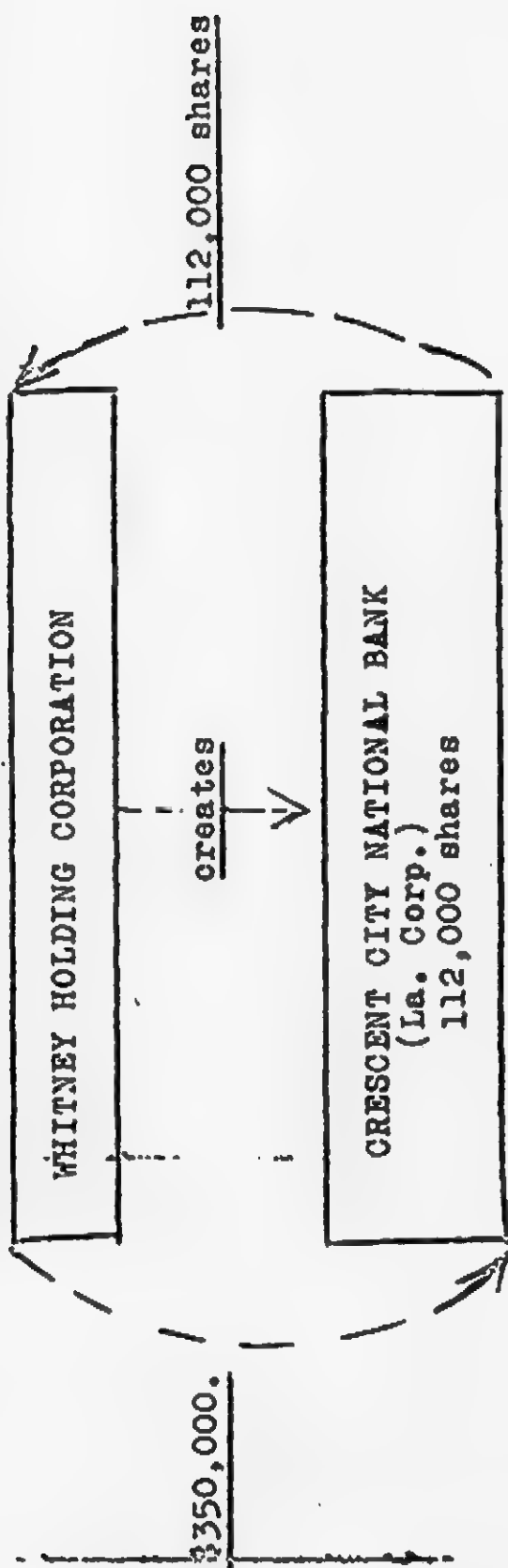
Fifth: Whitney National Bank of New Orleans then provided \$650,000. of its funds to Whitney Holding

Corporation "with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish, receiving all of its (the Jefferson Bank's) stock therefor" (*See Defendant's Ex. 6, pg. 2, Item 6*).

15. In order to assist the Court to obtain more quickly a detailed analysis of these corporate maneuvers, plaintiffs have caused to be prepared, from *Defendant's Ex. 6*, a graphic presentation thereof, which we incorporate in this Statement of Material Facts at this point.

STEP I



STEP VI

The Crescent City National Bank never operated as a bank; never conducted any banking business; never owned any banking assets or any other assets prior to the merger with Whitney National Bank of New Orleans described in Step 3. It was organized as a "phantom", solely to enable Whitney National Bank of New Orleans to merge with it; eliminate any dissenting stockholders of Whitney National Bank of New Orleans as part of the merger procedure. Then, the "phantom" disappears and there remains again only one bank, to wit, the old Whitney Bank of New Orleans, operating and trading under its old name.

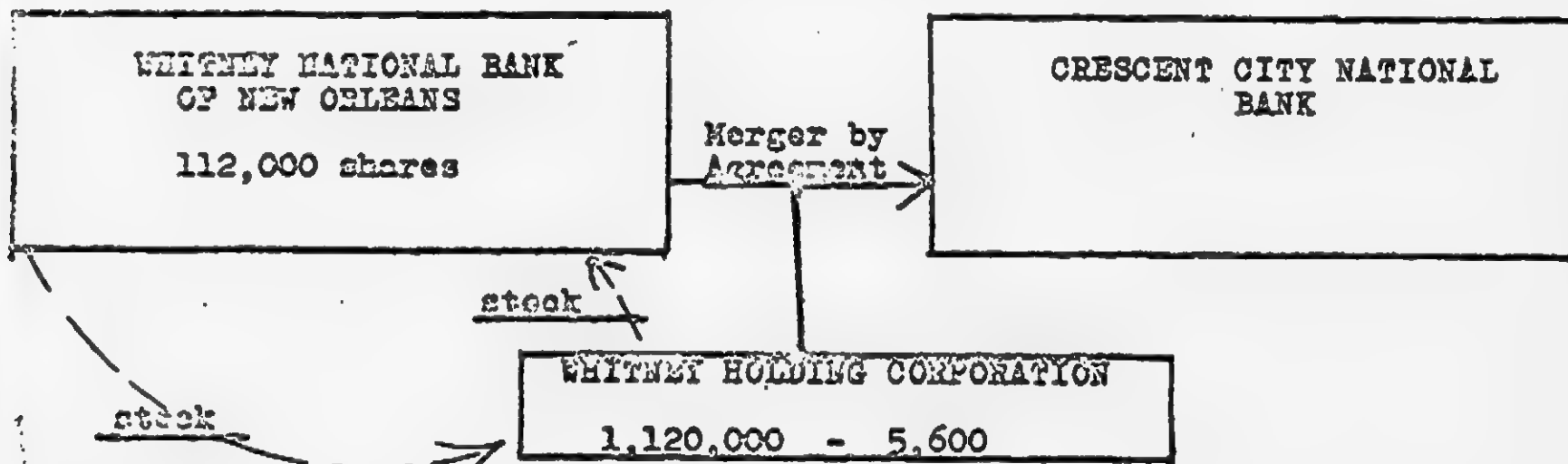
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STEP III

(Merger Agreement)



Whitney National Bank (New Orleans) merges with Crescent City National Bank. All assets of Whitney National Bank (New Orleans) become Crescent's. Name of Crescent City changed back to Whitney National Bank (New Orleans).

Stock of Whitney National Bank (New Orleans) 112,000 shares exchanged for 1,114,400 shares of Whitney Holding Corporation, (i.e. 1,120,000 less 5,600 already held by Whitney National Bank (New Orleans)). Thus, stockholders of Whitney National Bank (New Orleans) become 100% owners of Whitney Holding Corporation.

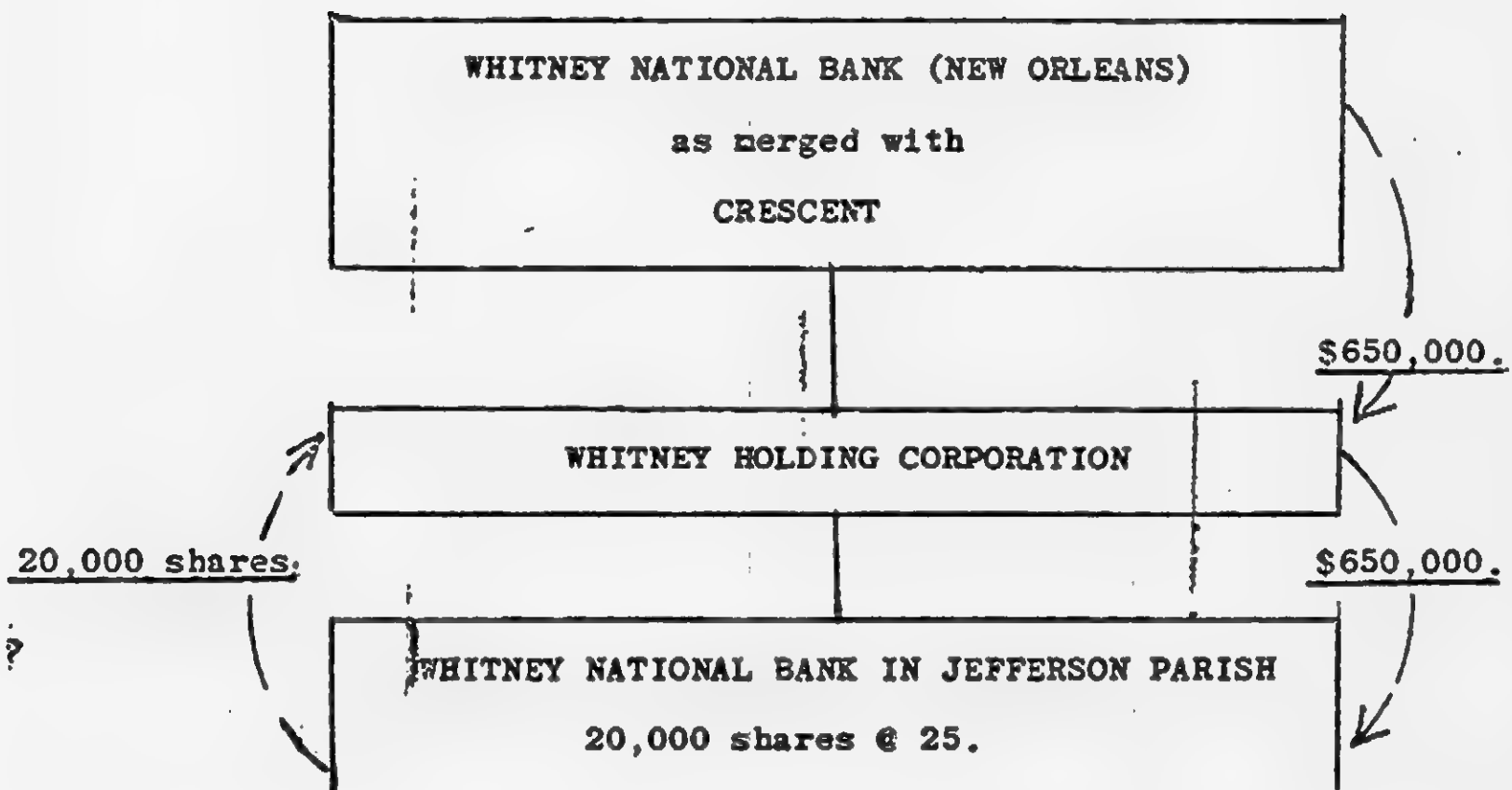
Under National Banking Act, any dissenting stockholder of Whitney National Bank (New Orleans) is bought out if he elects to sell instead of going along with merger.

②

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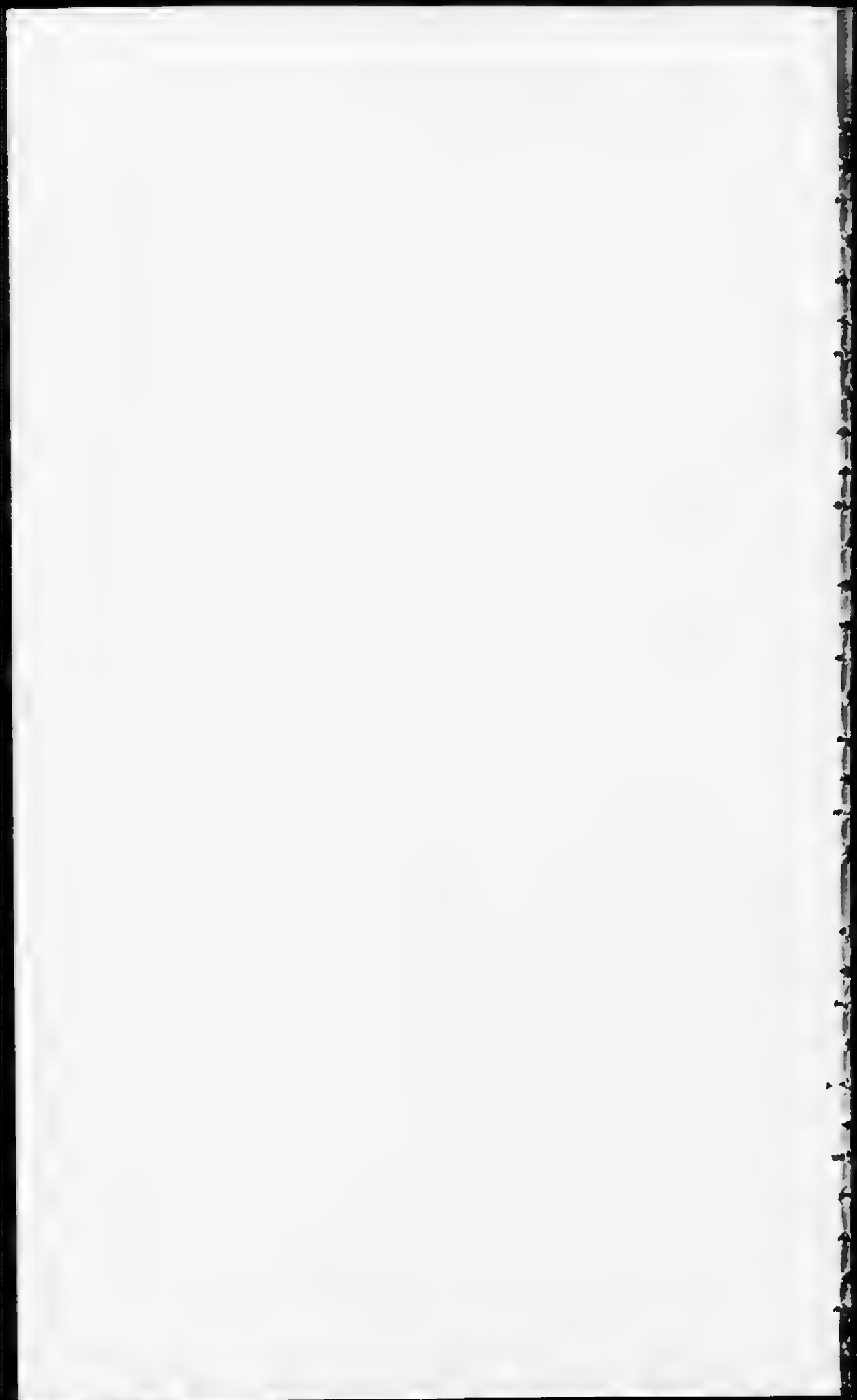
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STEP IV



This Step, as described by President of Whitney National Bank
(New Orleans), (Plaintiffs' Ex. A):

"The Crescent City National Bank (to be named Whitney National Bank of New Orleans) will provide \$650,000. Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish."



16. When the time arrived for Whitney National Bank of New Orleans to obtain support from its stockholders for these corporate proposals, the President of said bank advised his shareholders in writing as follows (*Defendant's Ex. 6, pg. 2*):

"The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish to protect Whitney's competitive position in that area . . ."

17. On October 28, 1961, on a letterhead of the Whitney National Bank of New Orleans, the President of Whitney further wrote to his shareholders as follows (*Plaintiffs' Ex. B*):

"It is important to bear in mind that under the plan all authorized shares of the Whitney Holding Corporation will be distributed to you, the stockholders of the Whitney National Bank, in exchange for your presently held stock. *You will then own the same proportionate interest as you now have in the Whitney National Bank in all of the assets of the holding corporation, which then obviously includes all of the assets of the present Whitney National Bank . . .*

"We are firmly convinced, after careful consideration of the alternatives, *that your common ownership of all of the Whitney National Bank of New Orleans stock and all of the stock of a Whitney National Bank in Jefferson Parish by a holding company to be owned by you is the soundest method of pooling all of the deposits of our customers and of our capital funds for their use . . .* From the depositors' point of view, those in the smaller bank *will be assured of the same management which directs the larger one without possibility of interruption. . . .*

"By reason of the common ownership of the two banks in a holding company there can arise no conflict of interest between them as there can between affiliated banks. There will be no minority stockholder to be affected.

"From the customer point of view there will be no conflict of interest arising out of the manner in which the customer sees fit to divide his business between

the commonly owned banks in the two parishes. He will have the full benefits of a relationship with the large bank and its officers.

"Because of the permanent relationship between the large and the smaller bank, the smaller one can operate safely with a smaller capitalization. . . .

"Finally, this holding company group broadens banking possibilities for the future. . . . It will give metropolitan New Orleans the soundest form of banking unit *which can accumulate and pool banking resources in this community where they can be used to the greatest advantage in the further development of the entire area.*" (Emphasis supplied.)

18. After its creation by Whitney National Bank of New Orleans, Whitney Holding Corporation made application to the Federal Reserve Board of Governors for approval of its acquisition of shares in the aforementioned Crescent City corporation and Whitney National Bank in Jefferson Parish referred to above. In accordance with the requirements of 12 U.S.C. §1842(b), the Board thereupon notified the Comptroller of the Currency of the application and sought his views (*Answer of Intervening Defendant herein, Para. 16, 17*).

19. Having previously given to the Whitney representatives as aforesaid, his informal approval of the plan *ex parte* as hereinabove set forth, defendant Comptroller, in three short paragraphs of a letter to the Board, gave his full approval to the proposals of the Whitney organization; and in his said letter, he failed even to mention or comment upon the legality or illegality of the proposals under 12 U.S.C. §36(c), 12 U.S.C. §1846, or *Louisiana Revised Statutes 6:54*, enacted in pursuance of said 12 U.S.C. §36(c) (*Plaintiffs' Ex. II*).

20. The Federal Reserve Board, on the other hand, took a formal, written position that the question of whether or not such proposals as Whitney's are lawful under 12 U.S.C. §36(c) or any other provision of the National Bank Act are not for the consideration of the Board, but are matters to be considered by the defendant Comptroller (*Plaintiffs' Ex. I*). In this respect, the Board ruled that these questions (*Plaintiffs' Ex. I, pg. 2*)—

"relate largely to an alleged violation of provisions of the National Bank Act, which is administered by the Comptroller of the Currency, an official of the United States Treasury Department."

21. Thus, when it rendered a decision on May 3, 1962 approving the application of Whitney Holding Corporation to proceed to acquire the shares in Crescent and Whitney Jefferson, the Federal Reserve Board, without referring to 12 U.S.C. §36(c), 12 U.S.C. 1846 or the Louisiana laws prohibiting branching beyond parish lines, candidly stated (*Defendant's Ex. 5, pg. 6*):

"The stated purpose of the proposed holding company system is to enable an organization centered about Whitney New Orleans to provide banking services not only through its existing 12 offices within the City of New Orleans but also through offices in the East Bank of Jefferson Parish. The holding company system will be under the direction of the present executive management of Whitney New Orleans; in fact, for present purposes the holding company itself is simply the means by which Whitney banking offices may be established and operated in East Bank. Consequently, the character of the management and the prospects of the applicant and its two proposed subsidiary banks may be evaluated largely on the basis of the financial history and condition, character of management, and prospects of Whitney New Orleans.

"The financial history of Whitney New Orleans has been satisfactory. The condition of that bank is sound and its management is regarded as satisfactory. Accordingly, it is believed that the management of Applicant and Whitney Jefferson will be satisfactory and the prospects of the holding company, which depend principally upon the prospects of Whitney New Orleans, are favorable."

22. In a dissenting opinion from the aforementioned ruling of the Federal Reserve Board, it was stated (*Defendant's Ex. 5, pg. 18, 21, 22*):

"Whitney National Bank of New Orleans is the largest banking institution of the City of New Orleans and

the State of Louisiana. . . . The proposal before the Board of Governors would place control of this bank in Whitney Holding Corporation and thereby would overcome the effect of the branch banking laws of Louisiana, which prevent Whitney from establishing any offices outside of Orleans Parish (the City of New Orleans). In other words, by this means, the Whitney banking organization would escape the legal limitations that now permit it to have offices only within the City of New Orleans. . . .

"The proposal before the Board . . . would also . . . provide a vehicle for enhancing the existing high degree of banking concentration in the area and would permit a centralization of banking power of major proportions in individual hands, to a degree that, to my knowledge, is without parallel in the American banking system. . . ." (Emphasis supplied.)

23. The aforementioned ruling by the Federal Reserve Board is subject to judicial review by the Fifth Circuit Court of Appeals (12 U.S.C. §1848). Upon such review, the Court has jurisdiction

"to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper."

A petition to review the Board's ruling upon the Whitney application is presently pending in the Fifth Circuit (*Bank of New Orleans and Trust Company v. Board of Governors of the Federal Reserve System*, No. 19788, C.C.A. 5).

24. Defendant Comptroller's predecessor in office originally took the position that he would not issue any approval of or certificate for the establishment and operation of the Whitney National Bank in Jefferson Parish until final approval of all prior steps in the Whitney plan had been obtained "as required by the Bank Holding Company Act" (*Affidavit of Defendant Saxon*, pg. 4, Para. 6).

25. However, before such approval could become final under that Act (12 U.S.C. §1848), or under the Regulations of the Federal Reserve Board itself, Defendant Comptroller issued on May 18, 1962, his approval of the consum-

mation of the last steps required to enable the Whitney organization to establish and open Whitney National Bank in Jefferson Parish (*Plaintiffs' Ex. C*).

26. Defendant Comptroller thereupon announced that, unless this Court issued an injunction restraining him from issuing a certificate authorizing the establishment and commencement of business by Whitney National Bank in Jefferson Parish, he considered it his immediate "duty . . . to issue the Certificate of Authority to Whitney Jefferson . . .". (*Affidavit of Defendant Saxon, pg. 7, Para. 12*).

27. The Attorney General of Louisiana, on June 13, 1962, issued a written opinion to the State Bank Commissioner of Louisiana, advising (*Plaintiffs' Ex. E*):

"It is the opinion of this office, therefore, that a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of the parent company."

28. Meanwhile, Whitney National Bank caused to be printed checks and letterheads for the proposed Whitney National Bank in Jefferson Parish, which show the name "Whitney National Bank" in very large, bold letters; and the words "in Jefferson Parish" in such tiny caps that they do not seem even to constitute part of the name of the proposed Jefferson bank office. Specimens of such checks, made available by defendants herein, are inserted here for the Court's consideration.

29. The Complaint herein was filed on June 9, 1962. Defendant Comptroller, upon being advised of the filing or impending filing, voluntarily agreed to withhold issuance of his Certificate of Authority to Whitney Jefferson until the Motion for Preliminary Injunction could be determined.

30. On June 27, 1962, when defendant Comptroller refused voluntarily to withhold issuance of the Certificate any longer, Judge Hart, after hearing, granted a Temporary Restraining Order directing the Comptroller to withhold his certificate until July 6, 1962. (See Transcript of Proceedings before Judge Hart filed herewith.)

31. On July 6, 1962, after long oral argument, Judge Holtzoff granted plaintiffs' motion for a preliminary injunction. (See Transcript of Proceedings of July 6, 1962 before Judge Holtzoff filed herewith.)

32. On July 10, 1962, Judge Holtzoff signed the Preliminary Injunction herein.

33. The Federal Bank Holding Company Act (12 U.S.C. §1846) provides:

"Reservation of rights to States

"The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof."

34. On July 10, 1962, the Governor of Louisiana signed into law Act No. 275 of the 1962 Regular Session of the Louisiana Legislature (Certified Copy of said Act is filed herewith as *Plaintiffs' Ex. L*).

Said Act, designated "Emergency Legislation" by the Governor, went into effect when signed on July 10, 1962 and it "prohibits the formation of new bank holding companies", and provides for the "control of the future expansion of existing bank holding companies and of their subsidiaries".

Section 3 of said Act provides:

"It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued."

35. Article 3, Section 27 of the Louisiana Constitution provides that this Act, certified by the Governor of Louisiana as "emergency legislation", "shall become effective immediately upon approval by the Governor", which was on July 10, 1962 (*Plaintiffs' Ex. M*).

36. During the proceedings before Judge Holtzoff on July 6, 1962, the attorney for Whitney National Bank in Jefferson Parish, the intervening defendant herein, made the following statements on the record with reference to this Louisiana Statute (and the Court's statements, of course, are self-explanatory), at pages 70, 71 of the transcript:

"*The Court*: What statute is before the Legislature?

"*Mr. Monroe*: The statute in Louisiana that will

make it a crime, punishable by imprisonment, for a bank holding company subsidiary to open its doors for business, whether or not the Comptroller has issued a certificate. Even though he has issued the certificate it will be a crime, when the statute becomes law, to open our doors.

"That statute since last Wednesday has been rushed through both Houses of the Legislature and as the last order of business on July 4th that statute was passed by the Upper House, with this punitive clause in it, aimed at the Whitney National Bank situation, because it is the only corporate holding corporation in Louisiana; only can it apply to this particular Whitney Bank in Jefferson Parish. It has passed both houses and both houses recessed. It cannot become law until some time on Monday....

"*The Court:* I am not going to rush the matter in order to prevent an action on the part of the Louisiana or any other state legislature. I think, then, with all due respect to the legislature, I ought to maintain the status quo.... This is an argument that is addressed to the Court's discretion that would be in favor of granting an injunction...."

And at page 73:

"*Mr. Monroe:* It (the Louisiana statute) is the meat of this case, Your Honor....

"*The Court:* But if it is the meat of this case, then I ought to maintain the status quo because I don't think I ought to take time by the forelock in order to forestall an action of a state legislature...."

And, finally, at page 85:

"*The Court:* I do not think I should engage in an unseemly race with a state legislature....

"*Mr. Monroe:* We therefore don't believe that you should participate with it and keep us unable to go forward.... I would like to point out to Your Honor that we have many hundreds of thousands of dollars invested in the preparation of this thing....

"*And we will never have the opportunity to open this bank if the injunction is issued.*" (Emphasis supplied.)

37. Plaintiff, Bank of New Orleans and Trust Company, is a banking corporation chartered by the State Bank Commissioner of Louisiana to conduct the business of banking solely and exclusively at and through a main office and bank branches, restricted by *Louisiana R.S. 6:54* to the Parish of Orleans, and is prohibited by Louisiana law from establishing any branch or branches in Jefferson Parish, Louisiana (Affidavit of Livaudais, Ex. Vice Pres. of said plaintiff).

However, as of June 21, 1962, said plaintiff enjoyed at its offices so restricted to Orleans Parish, checking accounts of depositors who reside in or whose businesses are located in Jefferson Parish amounting to approximately \$2,029,000., and these represented deposits by 2,812 such individuals and businesses. Said deposits were equal to 12.3% of the total checking accounts deposits enjoyed by said plaintiff on that date (*Livaudais Affidavit*, pg. 2).

Furthermore, on June 2, 1962, said plaintiff's "total amount of commercial loans to persons residing in or businesses located in Jefferson Parish exceeding \$10,000. amounted to approximately \$3,410,000." or "approximately 15% of the total amount of commercial loans exceeding \$10,000. of all customers of the Bank on that date". The foregoing figures are limited to commercial loans exceeding \$10,000., and in addition thereto, the said plaintiff has outstanding a large volume of commercial loans to persons and businesses in Jefferson Parish in amounts less than \$10,000. (*Livaudais Affidavit*, pg. 2).

38. Plaintiff, Bank of Louisiana in New Orleans, is a banking corporation chartered by the State Bank Commissioner of Louisiana to conduct the business of banking solely and exclusively at and through a main office and bank branches restricted by *Louisiana R.S. 6:54* to the Parish of Orleans and is prohibited by Louisiana law from establishing any branch or branches in Jefferson Parish, Louisiana. (*Affidavit of Clyde C. Wheeler, Asst. Vice-President of said plaintiff.*)

However, as of July 19, 1962, said plaintiff enjoyed at its offices so restricted to Orleans Parish, accounts of "demand and time depositors who reside in or whose businesses are located in Jefferson Parish amounting to approximately \$502,000., represented by deposits by 621 individuals and businesses, (which) accounted for approxi-

mately 8.6% of the total demand and time deposits of customers on that date". "In addition to checking accounts, the Bank serves a very large number of individuals and businesses who reside in or are located in Jefferson Parish on installment loans." (*Wheeler Affidavit*, pg. 2)

39. Plaintiff, Guaranty Bank & Trust Company, is a banking corporation chartered by the State Bank Commissioner of Louisiana to conduct the business of banking solely and exclusively at and through a main office and bank branches limited by *Louisiana R.S. 6:54* to the Parish of Lafayette, Louisiana, and prohibited by Louisiana law from establishing any branch or branches in Jefferson Parish, Louisiana (*Affidavit of R. J. Castille, President of said Plaintiff*).

Said plaintiff "has customers, depositors and borrowers who reside or have . . . businesses situated in Jefferson Parish, Louisiana, and these customers borrow money and maintain accounts with" the said plaintiff. In addition, said plaintiff "makes commercial loans to some of its customers who have places of business in Jefferson Parish, Louisiana, and it follows necessarily that the Guaranty Bank & Trust Company of Lafayette, Louisiana would be damaged if the Whitney National Bank of New Orleans, the largest bank in the State, were permitted to open branch banking facilities, through one device or another, in Jefferson Parish, Louisiana" (*Affidavit of Castille*, pg. 2).

Respectfully submitted,

EDWARD L. MERRIGAN,
Attorney for Plaintiffs

July 24, 1962



WADE O. MARTIN, JR.

I, the undersigned Secretary of State, of the State of Louisiana

do hereby certify that the annexed and following five (5) pages
constitute a true and faithful photographic copy of House Bill
No. 1221, which has been designated as Act No. 275 of the 1962
Regular Session of the Louisiana Legislature, as shown by
comparison with the original document on file in the archives
of this office.



*In testimony whereof, I have hereunto set
my hand and carried the Seal of my Office
to be affixed at the City of Baton Rouge on
this, the 12th day of July, A. D. 1962*

Wade O. Martin, Jr.
Secretary of State

CERTIFICATE 162

295

[Handwritten signature/initials]

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Act No. 275

HOUSE BILL NO. 1221

BY: MR. ANGELLE
(BY REQUEST)

AN ACT

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

ORIGINATED

IN THE

House of Representatives

Certified by the Governor as
Emergency Legislation.

July 4, 1962
date

Wade O. Martin, Jr.
Secretary of State

W. Flex & Cole

Clerk of the House of Representatives

Rec'd by the Governor

July 10, 1962 at 2:25 PM

D. Andrews

Received by Secretary of State

this 11th day of July 1962

Wade O. Martin, Jr.
Secretary of State

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236

HOUSE BILL No. 1221

By: Mr. Angelle
(By Request)

AN ACT

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

Be it enacted by the Legislature of Louisiana:

Section 1. Declaration of Policy.

It is declared to be the policy of this State to protect and to foster the growth of the independent unit bank, and institution whose ownership and origins are grounded in the local community and whose activities are bound up with local economic and social organizations; to prevent the undesirable concentration of control in the banking field to the detriment of the public interest; to insure effective competition among all banking institutions; and, to accomplish these objectives by prohibiting the formation of new banking holding companies and the acquisition of control by whatever means of additional banking institutions by existing bank holding companies and by their subsidiaries.

Section 2. Definitions.

(a) "Bank holding company" means any company, foreign or domestic, including a bank, (1) which directly or indirectly owns, controls, or holds with power to vote, 25 per centum or more of the voting shares of any bank, or (2) which controls in any manner the election of a majority of the directors of any bank, or (3) for the benefit of whose shareholders or members 25 per centum or more of the voting shares of any bank or a bank holding company is held by trustees; and for the purposes of this Act, any successor to any such company shall be deemed to be a bank holding company from the date as of which such predecessor company became a bank holding company. Notwithstanding the foregoing, (A) no company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities and which are held only for such period of time as will permit the sale thereof upon a reasonable basis, and (B) no company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares

acquired in the course of such solicitation (C) nor shall this act apply to shares acquired by a bank holding company which is a bank, or by any banking subsidiary of a bank holding company, in satisfaction of a debt previously contracted in good faith, but such bank holding company or such subsidiaries shall dispose of such shares within a period of two years from the date on which they were acquired or from the date of enactment of this Act, whichever is later (D) nor shall this act apply to shares which are held or acquired by a bank holding company which is a bank or by any banking subsidiary of a bank holding company, in good faith in a fiduciary capacity; except where such shares are held for the benefit of the shareholders of such bank holding company or any of its subsidiaries, or to shares which are of the kinds and amounts eligible for investment by National banking associations under the provisions of section 5136 of the Revised Statutes, or to shares lawfully acquired and owned prior to the date of enactment of this Act by a bank which is a bank holding company, or by any of its wholly owned subsidiaries.

(e) "Company" means any corporation, business trust, partnership, association, or similar organization doing business in this State, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State,

(f) "Bank" means any commercial bank, savings bank, trust company or similar organization doing business in this State.

(g) "Subsidiary," with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company; or (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company 25 per centum or more of whose voting shares are held by trustees for the benefit of the shareholders or members of such bank holding company.

(h) The term "successor" shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship

between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank.

Section 3. Prohibitions upon Acquisition of Bank Shares or Assets.

It shall be unlawful (1) for any action to be taken which results in a company or a bank becoming a bank holding company as defined in this Act; (2) for any bank holding company or subsidiary thereof to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company or subsidiary will directly or indirectly own or control more than 25 per centum of the voting shares of such bank; (3) for any bank holding company or subsidiary thereof to acquire all or substantially all of the assets of a bank; or (4) for any bank holding company or subsidiary thereof to merge or consolidate with any other bank holding company or any subsidiary thereof; (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued. Notwithstanding the foregoing, this prohibition shall not apply to additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition.

Section 4. Penalties.

Any bank, bank holding company, company, or any subsidiary of any of them which willfully violates any provision of this Act, or any regulation or order issued by the State Bank Commissioner pursuant thereto, shall upon conviction be fined not less than \$500 nor more than \$1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not less than \$1,000 nor more than \$5,000 or imprisoned not more than one year, or both.

Section 5. Administration.

The State Bank Commissioner shall administer and carry out the provisions of this Act and may issue such regula-

tions and orders as may be necessary to discharge this duty and to prevent evasions of the Act.

Section 6. Savings Clause.

Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of any existing law, nor shall anything herein contained constitute a defense to any action, suit or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct.

Section 7. Severability.

If any provision of this Act or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Section 8. Repeal.

All laws or parts of laws in conflict herewith are hereby repealed.

[Copy Illegible],
Speaker of the House of Representatives.

[Copy Illegible],
Lieutenant Governor and President of the Senate.

JIMMIE H. DAVIS,
Governor of the State of Louisiana.

Approved: July 10, 1962 at 4:15 P.M.

PLAINTIFFS' EXHIBIT M

LEGISLATIVE DEPARTMENT

Art. 3 § 26

Notes of Decisions

1. Promulgation, judicial inquiry as to

The fact whether or not the law has been duly promulgated may be within the province of the judicial, but whether or not it went regularly through all the stages necessary for its passage as a law, up to the promulgation, is not a subject of judicial inquiry. *Whited v. Lewis*, 1873, 25 La. Ann. 568.

§ 27. Effective date of laws; publication

Section 27. All laws enacted shall go into effect at twelve o'clock, noon, on the twentieth day after the Legislature shall have adjourned. This provision shall not apply to the general appropriation Act or the Act appropriating money for the expenses of the Legislature, or to any Act the necessity for the immediate passage of which shall have been certified to the Legislature by the Governor, or the acting Governor, while the Legislature is in session, and any such Act so certified shall become effective immediately upon approval by the Governor. All Acts shall be published in the official journal without delay after passage.

The Legislature shall provide for the publication of said Acts in book form and shall fix the time limit for their delivery to the Secretary of State. In the publication of Acts of the Legislature, the signatures of the Governor and presiding officers of the two houses shall be omitted, but the date of approval of the Acts, or of their passage over the Governor's veto, or of Acts becoming law without the Governor's signature, shall be published at the bottom of each Act. (As amended Acts 1936, No. 70, adopted Nov. 3, 1936.)

Historical Note

1936 Amendment:

The 1936 amendment added the provisions relating to acts certified to the legislature by the governor or acting governor as necessary for immediate passage.

Earlier Constitutions:

1913, arts. 42, 165.
 1898, arts. 42, 165.
 1879, arts. 40, 154.
 1868, art. 109.
 1864, art. 108.
 1852, arts. 100, 129.
 1845, arts. 103, 132.
 1812, art. 6, § 15.

Cross References

Adjournment of House and Senate, see art. 3, § 20.
 Bills and resolutions,

Indorsement by secretary of state, see LSA-R.S. 43:24.
 Register of resolutions, see LSA-R.S. 43:24.
 Signing of bills by Governor, see art. 5, § 15.

Certification of documents, see LSA-R.S. 49:204.

Delivery of bills to Governor, see art. 3, § 26.

Deposit of laws with secretary of state, see art. 5, § 15.

Filed July 24, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
LOUISIANA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFF, BANK OF LOUISIANA IN
NEW ORLEANS

STATE OF LOUISIANA,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared:

CLYDE C. WHEELER a person of the full age of majority and a resident of the Parish of Orleans, who after being by me, Notary, first duly sworn, did depose and say:

That he is the Assistant Vice-President of the plaintiff, Bank of Louisiana in New Orleans, and he submits this affidavit in support of the pending motion for preliminary injunction in the above entitled cause:

That he understands that it has been asserted in this action that party-plaintiff, Bank of Louisiana in New Orleans, would suffer no damage to its business, its properties or its profits if the defendant, Comptroller of the Currency, issued a certificate to the Whitney National Bank of New Orleans to establish banking facilities in Jefferson Parish, Louisiana. Affiant states that such assertions are untrue and incorrect for the following reasons:

Plaintiff, Bank of Louisiana in New Orleans, maintains its principal office in the Parish of Orleans, State of Louisiana, and is restricted by State law from establishing banking facilities in Jefferson Parish or any other Parish in the State of Louisiana. Notwithstanding the fact that this plaintiff's banking facilities are limited to the Parish of Orleans, a very large number of the plaintiff's customers, depositors and borrowers reside in and are principally located in Jefferson Parish, Louisiana. Affiant has re-

viewed the ledgers of the Bank of Louisiana in New Orleans and:

1. As of July 19, 1962 the total amount of demand and time depositors who reside in or whose businesses are located in Jefferson Parish amounted to approximately \$502,000.00, and represented deposits by 621 individuals and businesses and accounted for approximately 8.6% of the total demand and time deposits of customers on that date. In addition to checking accounts the Bank serves a very large number of individuals and businesses who reside in or are located in Jefferson Parish on installment loans.

Accordingly, should the Comptroller of the Currency authorize the Whitney National Bank of New Orleans, the largest bank in the State, with combined resources of almost one-half billion dollars, to open branch banking facilities through one device or another in Jefferson Parish, plaintiff would necessarily suffer severe loss of loans, deposits and other business and would sustain damage to its business and profits. Additionally, if the Comptroller is permitted to issue the certificate of authority, as he proposes to do unless enjoined, this plaintiff would have no adequate remedy at law and would be unable to defend itself against the diversion to and appropriation by said Whitney National Bank of a substantial part of the banking business and services now enjoyed by the Bank of Louisiana in New Orleans.

CLYDE C. WHEELER.

Sworn to and subscribed before me this 20th day of July, 1962.

Notary Public.

Filed July 24, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF PLAINTIFF, GUARANTY BANK &
TRUST COMPANY, LAFAYETTE, LOUISIANA

STATE OF LOUISIANA,
Parish of Lafayette, ss:

Before me, the undersigned authority, personally came
and appeared:

R. J. CASTILLE a person of the full age of majority and a
resident of the Parish of Lafayette, Louisiana, who, after
being by me, Notary, first duly sworn, did depose and say:

That he is President of the plaintiff, Guaranty Bank &
Trust Company of Lafayette, Louisiana, and he submits
this affidavit in support of the pending motion for pre-
liminary injunction in the above-entitled cause.

That he understands that it has been asserted in this
action that the Guaranty Bank & Trust Company of La-
fayette, Louisiana, would suffer no damage to its business,
its properties or its profits if the defendant, Comptroller
of Currency, issued a certificate to the Whitney National
Bank of New Orleans to establish banking facilities in
Jefferson Parish, Louisiana.

Plaintiff, Guaranty Bank & Trust Company of Lafayette,
Louisiana, maintains its principal offices and banking
branches entirely within the Parish of Lafayette, Louisiana
and is restricted by State law from establishing banking
facilities in Jefferson Parish, Louisiana or any other
parishes in the State of Louisiana.

Plaintiff, Guaranty Bank & Trust Company of Lafayette,
Louisiana, has customers, depositors and borrowers who
reside or have branches of their businesses situated in
Jefferson Parish, Louisiana, and these customers borrow
money and maintain accounts with the Guaranty Bank &

Trust Company of Lafayette, Louisiana. Plaintiff, Guaranty Bank & Trust Company of Lafayette, Louisiana, makes commercial loans to some of its customers who have places of business in Jefferson Parish, Louisiana, and it follows necessarily that the Guaranty Bank & Trust Company of Lafayette, Louisiana, would be damaged if the Whitney National Bank of New Orleans, the largest bank in the State, were permitted to open branch banking facilities, through one device or another, in Jefferson Parish, Louisiana.

Additionally, if the Comptroller of the Currency is permitted to issue the certificate of authority, this plaintiff would have no adequate remedy at law.

R. J. CASTILLE.

Sworn to and subscribed before me this 19th day of July, 1962.

JAMES W. BEAN,
Notary Public.

Filed August 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

OPPOSITION OF DEFENDANT COMPTROLLER OF THE CURRENCY
TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT,
AND FURTHER CROSS-MOTION OF SAID DEFENDANT TO DISMISS

Comes now the defendant Comptroller of the Currency, by his undersigned counsel, and opposes plaintiffs' cross-motion for summary judgment herein on the ground that plaintiffs are not entitled to judgment as a matter of law. Said defendant's pending motion for summary judgment should be granted and plaintiffs' cross-motion should be denied.

The defendant Comptroller of the Currency further cross-moves for an order dismissing the complaint and this action on the grounds (1) that the complaint fails to state a

claim upon which relief can be granted, (2) that the Court lacks jurisdiction over the subject matter, (3) that plaintiffs have failed to join (and cannot join) indispensable parties, (4) that plaintiffs have failed to exhaust their administrative remedies, and (5) that plaintiffs lack standing to sue. This further cross-motion to dismiss is supplemental to the pending motion for summary judgment and is intended as an alternative request for relief.

/s/ JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

/s/ DONALD B. MACGUINEAS,
/s/ DAVID V. SEAMAN,
Attorneys, Department of Justice
Attorneys for Defendant Comptroller
of the Currency.

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed August 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF DEFENDANT COMPTROLLER OF THE CURRENCY
IN RESPONSE TO THE STATEMENT OF FACTS SUPPORTING
PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

As required by Local Civil 9(h), plaintiffs have filed a statement of the material facts as to which they contend there is no genuine issue. We agree that there are no disputed issues of fact in this case. We therefore do not contest plaintiffs' statement of material facts except as to the wording of the following paragraphs:

7. We deny the truth of the matters set forth in paragraph 7, except when stated as follows: "For a long period

of years, the management of Whitney New Orleans has desired to expand banking operations in Jefferson Parish. It has carefully studied all of the methods by which such operations might be legally conducted and has decided to utilize the device of a bank holding company."

13. We deny the truth of the matters set forth in paragraph 13, except when stated as follows: "Having obtained from the Comptroller informal approval of its desire to expand banking operations in Jefferson Parish, the Whitney management thereupon set into motion steps in a corporate reorganization, designed to accomplish such expanded operations through an independent bank controlled by a regulated bank holding company."

24. We deny the truth of the matters set forth in paragraph 24, except when stated as follows: "By letters dated October 3, 1961, former Comptroller Gidney gave preliminary approval to the formation of Crescent City National Bank, and the formation of Whitney Jefferson subject to the grant of the approval of the Federal Reserve Board to the formation of the holding company for the purpose of acquiring the new Whitney New Orleans and Whitney Jefferson, as required by the Bank Holding Company Act of 1956."

25. We deny the truth of the matters set forth in paragraph 25, except when stated as follows: "On May 3, 1962, the Board of Governors of the Federal Reserve Board rendered its decision and order approving the application of Whitney Holding Corporation for permission to become a bank holding company by acquiring the stock of the Crescent City and Whitney Jefferson. On May 18, 1962, the Comptroller issued his approval to the consolidation of Whitney New Orleans with Crescent City under the title of Whitney National Bank of New Orleans. The final steps for the completion of the formation of Whitney Holding Corporation and the Crescent City National Bank and the consolidation were all accomplished on May 24, 1962, and the new bank in New Orleans commenced business on May 25, 1962."

26. We deny the truth of the matters set forth in paragraph 26, except when stated as follows: "Following completion of the organization of Whitney Jefferson by the Whitney Holding Corporation, the Comptroller considered it to be his duty to issue a Certificate of Authority to Whitney Jefferson, since the organizers had faithfully

executed all steps and fulfilled all requirements necessary for the organization of a new bank."

/s/ JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

/s/ DONALD B. MACGUINEAS,
/s/ DAVID V. SEAMAN,
Attorneys, Department of Justice
Attorneys for Defendant Comptroller
of the Currency.

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed August 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

SUPPLEMENTARY AFFIDAVIT OF JAMES J. SAXON, COMPTROLLER
OF THE CURRENCY

James J. Saxon, being first duly sworn, deposes and says:

1. The purpose of this affidavit is to supplement my earlier affidavit dated June 20, 1962, heretofore filed in this matter.

2. I have reviewed the contents of my affidavit of June 20, 1962, and I now specifically reaffirm each and every statement contained therein. Subsequent to the preparation thereof, certain developments have occurred, to which I respectfully invite the attention of the Court.

3. On June 25, 1962, by letter addressed to Edward L. Merrigan, Esquire, the Board of Governors of the Federal Reserve System denied the Petition for Reconsideration, Revocation, and Rehearing filed on behalf of the plaintiffs in this action of the Board's Order of May 3, 1962, permitting Whitney Holding Company to become a bank holding company by acquiring substantially all of the voting stock

of a bank in New Orleans, Louisiana, and a bank in Jefferson Parish, Louisiana. This letter has been filed as Plaintiffs' Exhibit I to the affidavit of Lawrence A. Merrigan, dated June 26, 1962.

4. I am advised that review of the Board's Order of May 3, 1962, is presently being sought before the United States Court of Appeals for the Fifth Circuit.

5. On July 10, 1962, the Governor of the State of Louisiana approved Act No. 275, entitled "An Act to define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries."

6. Upon consideration of these subsequent developments, and after careful examination of the Louisiana statute, I have concluded that there has occurred no reason to alter the Comptroller's prior determination that a certificate of authority should be issued to Whitney National Bank in Jefferson Parish, pursuant to 12 U. S. C. § 27.

7. Accordingly, if the preliminary injunction entered herein is vacated, and if Whitney National Bank in Jefferson Parish so requests, inasmuch as upon a careful examination of the facts within my knowledge it appears that such association is lawfully entitled to commence the business of banking, it is my present intention to issue such certificate. For the information of the Court, there is appended hereto and designated as Defendant's Exhibit 7 a specimen of such certificate.

/s/JAMES J. SAXON.

Subscribed and sworn to before me, this 9th day of August 1962.

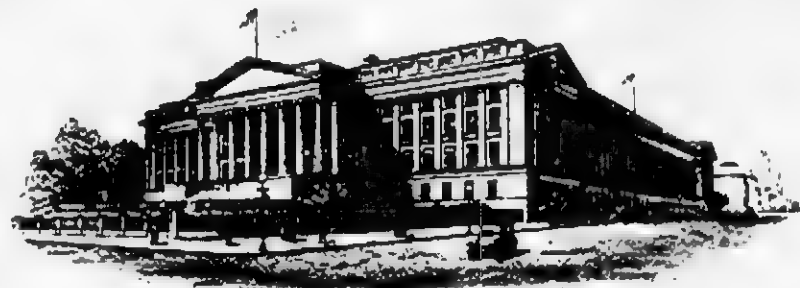
HELEN CRIST CRAVER,
Notary Public

My Commission Expires Sept. 30, 1966.

311

Comptroller of the Currency

TREASURY DEPARTMENT



OF THE UNITED STATES

Washington, D. C.,

Whereas, *satisfactory evidence has been presented to the Comptroller of the Currency that*
located in *State* *has complied with all provisions*
of the statutes of the United States required to be complied with before being authorized
to commence the business of banking as a National Banking Association;

Now, therefore, *Thereby certify that the above-named association is authorized*
to commence the business of banking as a National Banking Association.

In testimony whereof, witness my signature and seal of
office this *day of* *19*

Charter No.

Comptroller of the Currency

BEST COPY AVAILABLE

from the original bound volume

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION FOR LEAVE TO AMEND ANSWER

Intervening Defendant, Whitney National Bank in Jefferson Parish, moves the Court for leave to file and serve a supplemental answer, a copy of which is annexed hereto. The ground of this motion is that the matters set forth in the supplemental answer arose after Intervening Defendant had served its original answer.

Respectfully submitted,

W. GRAHAM CLAYTOR, JR.,
701 Union Trust Building,
Washington 5, D. C.

MALCOLM L. MONROE,
1424 Whitney Building,
New Orleans 12, Louisiana.

August 13, 1962.

Filed September 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

SUPPLEMENTAL ANSWER OF INTERVENING DEFENDANT WHIT-
NEY NATIONAL BANK IN JEFFERSON PARISH

Intervening Defendant, Whitney National Bank in
Jefferson Parish, for its supplemental answer herein,
alleges:

I

Since the date of filing Intervening Defendant's original
answer herein, the Louisiana Legislature has passed Act
No. 275 of 1962, a certified copy of which is Plaintiffs'
Exhibit L. Act No. 275 was first introduced into the Loui-
siana House of Representatives as House Bill 1221 on June
3, 1962 just six (6) days prior to the filing of this suit by
the Bank of New Orleans and Trust Company, et al.
House Bill 1221 was certified by the Governor as emergency
legislation on July 4, 1962. Under Louisiana law, House
Bill 1221 became immediately effective as law when it was
signed by the Governor as Act No. 275 on July 10, 1962,
at 4:45 p.m.

II

As first introduced in the House of Representatives,
House Bill 1221 would not have prevented Whitney Na-
tional Bank in Jefferson Parish from opening for business
as the stock of the said bank was already owned by Whitney
Holding Company. Subsequent to the granting of a
temporary restraining order by this Court on June 27,
1962, which prevented the Comptroller of Currency from
issuing a certificate to commence business to Whitney Na-
tional Bank in Jefferson Parish, House Bill 1221 was
amended by the insertion therein of the present Sub-Section
5 of Section 3 of Act 275, which applies only to Whitney

National Bank in Jefferson Parish, and which specifically provides as follows:

"Section 3. Prohibitions upon Acquisition of Bank Shares or assets.

It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof *to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued.* (Emphasis added.)

III

The temporary restraining order issued herein on June 27, 1962, and the preliminary injunction granted by this Court on July 6, 1962, dated July 10, 1962, both of which enjoined the Comptroller of Currency from issuing a certificate to commence business, were the sole reason that Whitney National Bank in Jefferson Parish did not open its doors for business several weeks prior to July 10, 1962, the effective date of Act No. 275.

IV

Because Louisiana Act 275 became effective on July 10, 1962, denial of the Plaintiffs' petition for permanent injunction and declaratory relief will not return Intervening Defendant to the *status quo* that existed on June 27, 1962, the date on which the temporary restraining order was issued. Plaintiffs now rely on Act 275 as an alternative ground for summary judgment in their favor. Consequently, the question of the applicability and legality of Act 275 has been injected into this case by the Plaintiffs, and this question must be passed upon if Intervening Defendant is to be restored to the former position it would have been in had the temporary restraining order not been issued.

V

Intervening Defendant specially avers that Act 275 furnishes no basis for granting the Plaintiffs' request for declaratory relief or for an injunction, either temporary or permanent, against either Defendant Comptroller of the Currency or Intervening Defendant, because Act 275 does

not apply to the Comptroller of the Currency or to a national bank such as Whitney National Bank in Jefferson Parish.

VI

Intervening Defendant further avers that Act 275, if applicable, violates the statutes and Constitution of the United States in the following respects:

(a) Act 275 is an attempt by the State of Louisiana to prevent the opening of a national bank that is properly chartered and organized in compliance with federal law, and as such is in direct conflict with the provisions of the National Banking Act, 12 U.S.C. 26, which provides that the Comptroller of Currency has authority to decide when a national bank may commence business. It is therefore invalid under the supremacy clause of the United States Constitution (Article VI, Section 2).

(b) Act 275 violates the Fourteenth Amendment to the United States Constitution in two respects:

- (1) Sub-section 5 of section 3 of Act 275, if applied to Whitney National Bank in Jefferson Parish, constitutes an arbitrary, capricious and unreasonable classification that denies equal protection of law to the Intervening Defendant.
- (2) Whitney National Bank in Jefferson Parish had completed all steps required by law and was ready to commence business several weeks prior to the effective date of Act 275. Intervening Defendant, therefore, had a vested property right which Act 275 denies Intervening Defendant without due process of law.

(c) Act 275 violates Article I, Section 10 of the United States Constitution in that it impairs the obligation of a contract between the federal government and the Intervening Defendant.

WHEREFORE, reiterating and fully reserving all its rights under the prayer of its original answer, Intervening Defendant further prays that this Court enter a judgment herein declaring that Louisiana Act 275 of 1962 does not apply to either the Defendant Comptroller of the Intervening Defendant, Whitney National Bank in Jefferson Par-

ish. In the alternative, Intervening Defendant further prays for a judgment declaring that the said Act 275 is unconstitutional and void. Intervening Defendant further prays for all legal, equitable and declaratory relief.

W. GRAHAM CLAYTOR, JR.,
701 Union Trust Building,
Washington 5, D. C.

MALCOLM L. MONROE,
1424 Whitney Building,
New Orleans 12, Louisiana.

August 13, 1962.

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title Omitted]

MOTION OF INTERVENING DEFENDANT FOR SUMMARY JUDG-
MENT

Comes now Intervening Defendant Whitney National Bank in Jefferson Parish, through its undersigned counsel, and moves the Court to enter summary judgment in its favor as prayed for in the original answer and the supplemental answer filed herein on the grounds that there is no genuine issue herein as to any material fact and that it is entitled to judgment as a matter of law. Attached in support of this motion are an affidavit of E. A. Waffenschmidt, dated August 3, 1962, and a Supplemental affidavit of James J. Gilly, dated August 3, 1962, a Statement of Facts As To Which There is No Genuine Issue filed pursuant to Local Civil Rule 9(h), and a printed Statement of Points and Authorities.

In further support of this motion, specific reference is here made to the following affidavits with exhibits attached:

1. Affidavit of James J. Saxton, Comptroller of the Currency, dated June 20, 1962.

2. Affidavit of Morgan L. Whitney, dated June 25, 1962.
3. Affidavit of James J. Gilly, dated June 16, 1962.

General reference is also made to the other papers on file in this action, since a motion for summary judgment searches the entire record before the Court.

W. GRAHAM CLAYTOR, JR.,
701 Union Trust Building
Washington 5, D. C.

MALCOLM L. MONROE,
1424 Whitney Building,
New Orleans 12, Louisiana.

August 13, 1962.

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF INTERVENING DEFENDANT WHITNEY NATIONAL
BANK IN JEFFERSON PARISH OF MATERIAL FACTS AS TO
WHICH THERE IS NO GENUINE ISSUE

Intervening defendant Whitney National Bank in Jefferson Parish, in support of its motion for summary judgment herein and pursuant to local Civil Rule 9(h), sets forth the following statement of material facts as to which there is no genuine issue in this case:

(1) Intervening defendant Whitney National Bank in Jefferson Parish, and Whitney National Bank of New Orleans, are national banking associations organized under 12 U.S.C. §§ 21 et seq., and are wholly owned subsidiaries (except for directors' qualifying shares) of Whitney Holding Corporation, a bank holding company incorporated under the laws of Louisiana and duly registered under the Bank Holding Company

Act of 1956, 12 U.S.C. §§ 1841-48. (Saxon Affidavit of June 20, 1962.)

(2) The present status of these three corporations was achieved pursuant to a plan which provided that Whitney National Bank of New Orleans, by consent of its stockholders and in accordance with appropriate approvals of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, would reorganize so that its stockholders would own stock of the Whitney Holding Corporation, a registered bank holding company, in the same proportion in which they formerly owned stock of the bank, and Whitney Holding Corporation in turn would own all of the Stock of Whitney National Bank of New Orleans. The plan further provided that Whitney Holding Corporation with approval of the Comptroller of the Currency and of the Federal Reserve Board would organize as another wholly owned subsidiary the Whitney National Bank in Jefferson Parish, utilizing as its capital funds some \$642,000 to be paid to Whitney Holding Corporation as a dividend out of undivided profits of Whitney National Bank of New Orleans, plus the funds subscribed by its directors for their qualifying shares. The steps pursuant to which this program was achieved are summarized hereafter. (Saxon Affidavit of June 20, 1962; Defendant's Exhibit 6.)

(3) On July 20, 1961, Whitney National Bank of New Orleans caused to be organized a Louisiana corporation under the name of "Whitney Holding Corporation," all the stock of which was issued to Whitney National Bank of New Orleans and promptly distributed to the stockholders of Whitney National Bank of New Orleans as a dividend. (Saxon Affidavit of June 20, 1962.)

(4) On June 28, 1961, there were filed with the Comptroller of the Currency three applications:

(a) To organize a new national banking association in New Orleans under the name of Crescent City National Bank as a wholly owned subsidiary of Whitney Holding Corporation;

(b) To consolidate Whitney National Bank of New Orleans into Crescent City National Bank under the name of the former, the stockholders of the

former Whitney National Bank of New Orleans to receive for their stock in that bank stock in Whitney Holding Corporation;

(c) To organize a new national banking association in Jefferson Parish under the name of "Whitney National Bank in Jefferson Parish", as a wholly owned subsidiary of Whitney Holding Corporation.

(5) On July 14, 1961 Whitney Holding Corporation filed with the Federal Reserve Board an application to become a registered bank holding company under the provisions of the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841-48. Notice of the receipt of this application was published in the *Federal Register* on July 28, 1961, which provided an opportunity for submission of views regarding the application. (Plaintiffs' Exhibit I.)

(6) On October 3, 1961, the Comptroller of the Currency gave preliminary approval to the formation of two new national banks, the Crescent City National Bank and the Whitney National Bank in Jefferson Parish, subject to approval by the Federal Reserve Board of the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of Crescent City National Bank (to be renamed Whitney National Bank of New Orleans) and Whitney National Bank in Jefferson Parish. (Saxon Affidavit of June 20, 1961, p. 7.)

(7) By order dated December 19, 1961, duly published in the *Federal Register* on December 22, 1961, the Federal Reserve Board scheduled for January 17, 1962, a public hearing on the application of Whitney Holding Corporation. At the public hearing held on January 17, 1962, representatives of Whitney Holding Corporation presented their arguments and all opponents of the application were given a full opportunity to be heard. None of the plaintiffs herein appeared at this public hearing or submitted any opposition to the application. (Saxon Affidavit of June 20, 1962, p. 5; Defendant's Exhibit 3; Defendant's Exhibit 5, p. 1.)

(8) On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding Corporation to become a registered bank holding company by

acquiring the stock of the Crescent City National Bank (to be renamed Whitney National Bank of New Orleans) and the Whitney National Bank in Jefferson Parish. (Saxon Affidavit of June 20, 1962, p. 5; Defendant's Exhibit 5.)

(9) On May 10, 1962, Whitney National Bank in Jefferson Parish executed and delivered to the Comptroller of the Currency Articles of Association and the Certificate of Organization pursuant to 12 U.S.C. § 24. By letter dated May 11, 1962 William B. Camp, Deputy Comptroller of the Currency, recognized the corporate existence of Whitney National Bank in Jefferson Parish as a national banking association.

(10) On May 18, 1962, the Comptroller of the Currency approved the consolidation of the existing Whitney National Bank of New Orleans into the Crescent City National Bank under the name Whitney National Bank of New Orleans. Under the terms of this consolidation the shareholders of the old Whitney National Bank of New Orleans exchanged their shares of stock for stock of Whitney Holding Corporation, dissenting shareholders being entitled to appraisal and purchase of their shares under the provisions of the National Banking Act. There were no dissenting shareholders. At this point, accordingly, the former shareholders of the old Whitney National Bank of New Orleans owned all of the stock of Whitney Holding Corporation which in turn owned all of the stock (except directors' qualifying shares) of the new Whitney National Bank of New Orleans (formerly Crescent City National Bank) and of the newly organized Whitney National Bank in Jefferson Parish. (Saxon Affidavit of June 20, 1962, p. 6.)

(11) Thereafter with the approval and in accordance with the regulations of the Federal Reserve Board, Whitney National Bank of New Orleans transferred to Whitney Holding Corporation a dividend of \$650,000 paid out of its undivided profits available for payment of dividends. \$642,000 of these funds were transferred by Whitney Holding Corporation to its subsidiary, the newly organized Whitney National Bank in Jefferson Parish. These funds, together with \$8,000 subscribed by the new directors for their qualifying shares, constitute the initial capital funds of

\$650,000 of Whitney National Bank in Jefferson Parish. (Saxon Affidavit of June 20, 1962, p. 6; Defendant's Exhibit 6.)

(12) The first meeting of the stockholders of Whitney National Bank in Jefferson Parish was held on May 24, 1962, and directors of the said bank were properly elected. The directors of the Whitney National Bank in Jefferson Parish have paid the purchase price for their qualifying shares, have been sworn, qualified and have taken office as directors. By-laws have been adopted. Officers of the bank have been elected. Stock of the Federal Reserve Bank of Atlanta in the amount of \$18,000.00 has been subscribed and paid for by Whitney National Bank in Jefferson Parish in its own name. (Saxon Affidavit of June 20, 1962, p. 6.)

(13) The present suit was filed on June 9, 1962, just as the Comptroller of the Currency was about to issue a Certificate of Authority pursuant to 12 U.S.C. § 27, permitting the Whitney National Bank in Jefferson Parish to commence banking operations. (Complaint.)

(14) Upon being advised of the filing or impending filing of this suit, the Comptroller of the Currency voluntarily agreed to withhold issuance of his Certificate of Authority to Whitney National Bank in Jefferson Parish until a motion for preliminary injunction filed by the plaintiffs in such suit could be determined. (Tr. June 27, 1962, pp. 3-4.)

(15) On June 27, 1962, the Comptroller of the Currency refused voluntarily to withhold issuance of the said Certificate of Authority any longer. Thereupon Judge Hart on application of the plaintiffs granted a temporary restraining order directing the Comptroller to withhold his Certificate until July 6, 1962. (Tr. June 27, 1962, pp. 24-25; temporary restraining order dated June 27, 1962.)

(16) On July 6, 1962, Judge Holtzoff granted plaintiffs' motion for a preliminary injunction, and on July 10, 1962, signed the preliminary injunction herein. (Tr. July 6, 1962, p. 86; preliminary injunction dated July 10, 1962.)

(17) Had it not been for the institution of these proceedings on June 9, 1962, the Comptroller of the Currency would have issued a Certificate of Authority

under 12 U.S.C. § 27 permitting the Whitney National Bank in Jefferson Parish to commence banking operations on or about that date and such banking operations would in fact have been commenced at that time. (Gilly Affidavit of August 3, 1962; Tr. June 27, 1962, p. 13.)

(18) Had it not been for issuance of the temporary restraining order on June 27, 1962, and the preliminary injunction on July 6, 1962, the Comptroller of the Currency would, on or about the former date, have issued a Certificate of Authority permitting the Whitney National Bank in Jefferson Parish to commence banking operations, and such banking operations would then immediately have been commenced. (Gilly Affidavit of August 3, 1962; Tr. June 27, 1962, pp. 8, 10, 12.)

(19) On July 10, 1962, Act No. 275 of the 1962 regular session of the Louisiana Legislature, purporting to regulate bank holding companies, was enacted into law. (Plaintiffs' Exhibit L.)

Respectfully submitted,

W. GRAHAM CLAYTOR, JR.,
701 Union Trust Building,
Washington 5, D. C.

MALCOLM L. MONROE,
1424 Whitney Building,
New Orleans 12, Louisiana.

August 13, 1962.

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF INTERVENING DEFENDANT

STATE OF LOUISIANA,
Parish of Orleans.

Before me, the undersigned authority, A Notary Public duly qualified and commissioned in the Parish of Orleans, State of Louisiana, personally came and appeared:

E. A. WAFFENSCHMIDT, who, being by me duly sworn, did depose and state that:

(1) Affiant is a resident of the City of New Orleans, State of Louisiana, and is the Cashier and Assistant Vice President of Whitney National Bank in New Orleans. This affidavit is made and filed in support of the motion for summary judgment filed by Whitney National Bank in Jefferson Parish, Intervening Defendant in the above entitled proceedings.

(2) At the Stockholders Meeting of the Whitney National Bank held pursuant to due notice on November 29, 1961, affiant served as Secretary of this meeting. In his capacity as Secretary of the said meeting, affiant was charged with responsibility for presenting the final recapitulation of the vote on the resolution. Affiant declares that the attached Tabulation of Vote, marked Whitney Exhibit No. 5, on the resolution to ratify the consolidation agreement between Whitney National Bank of New Orleans and Crescent City National Bank is true and accurate in every respect.

(3) Affiant further declares that none of the stockholders of Whitney National Bank voting against the consolidation

agreement have requested that the value of their shares be appraised pursuant to 12 U.S.C. 215.

E. A. WAFFENSCHMIDT.

Sworn and subscribed before me, this 3rd day of August, 1962.

Melvin A. Schwartzman,
Notary Public.

My commission is issued for life.

INTERVENING DEFENDANT EXHIBIT 5

TABULATION OF VOTE

Resolution: Reaffirmation of Immediation Agreement Between
Whitney National Bank of New Orleans and Crescent
City National Bank

In Favor of; In Person	<u>442</u>	<u>TOTAL</u>
By Proxy	<u>93,183</u>	<u>93,645</u>
Against: In Person	<u>522</u>	
By Proxy	<u>7,143</u>	<u>12,145</u>

John C. Shea
 REGISTRAR

Approved
 JUDGES OF ELECTION

By [Signature]
 Chairman

Approved and certified:

By [Signature]
 Secretary

EXHIBIT 5

TABULATION OF VOTE

Resolution: 3 - Authorizing Board of Directors to proceed
with carrying out the consolidation
Agreement

		<u>TOTAL</u>
In Favor of:	In Person <u>779</u>	
	By Proxy <u>93,044</u>	<u>93,823</u>
Against:	In Person <u>4881</u>	
	By Proxy <u>7,143</u>	<u>12,024</u>

John R. Shea
 REGISTRAR

Approved
 JUDGES OF ELECTION

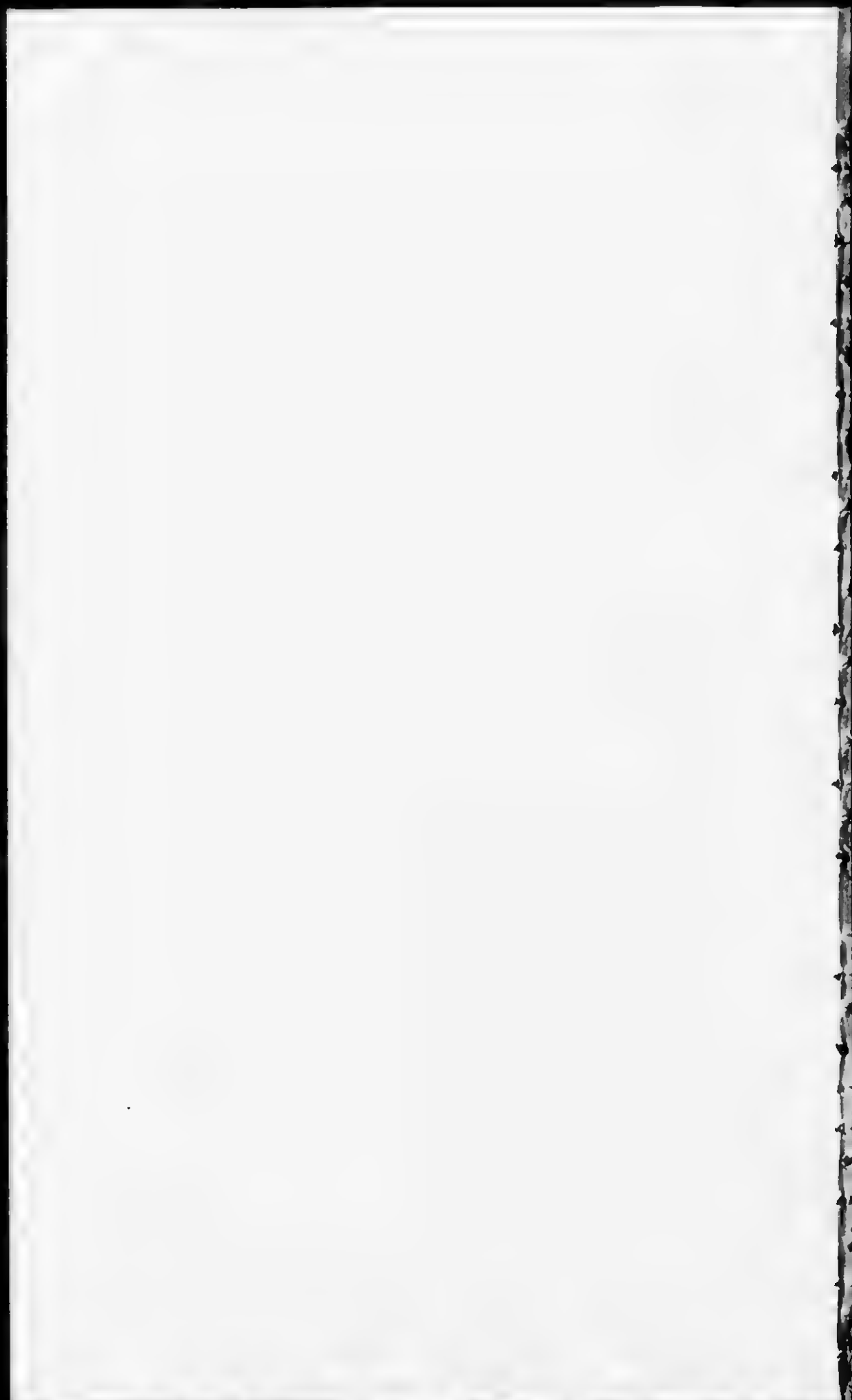
By [Signature]
 Chairman

Approved and certified:

By [Signature]
 Secretary

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Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

AFFIDAVIT IN SUPPORT OF INTERVENING DEFENDANT

STATE OF LOUISIANA,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared:

JAMES J. GILLY, who, being by me duly sworn, deposes and says:

(1) I am a resident of the City of New Orleans and President of the Whitney National Bank in Jefferson Parish. This affidavit is made to supplement the Affidavit made in these proceedings on June 16, 1962 and is filed in support of Intervening Defendant's Motion for Summary Judgment.

(2) The Whitney National Bank in Jefferson Parish would have been open for business prior to June 27, 1962, had it received a certificate to open from the Comptroller of the Currency. Attached hereto for identification is the 1962 Legislative Calendar of the State of Louisiana, marked Whitney Exhibit No. 1, and the Official Journal of the House of Representatives of the State of Louisiana for June 27, 1962, marked Whitney Exhibit No. 2.

(3) As is shown on the attached List of Directors of Whitney National Bank of New Orleans, marked Whitney Exhibit No. 3, and List of Directors of Whitney National Bank in Jefferson Parish, marked Whitney Exhibit No. 4, both of which are on file with the Office of the Comptroller of Currency, there are only four directors common to each Board.

JAMES J. GILLY.

Sworn and subscribed before me, this 3rd day of August, 1962.

MELVIN A. SCHWARTZMAN,
Notary Public.

My Commission is issued for life.

EXHIBIT 1

1962

LEGISLATIVE CALENDAR

OF THE

STATE OF LOUISIANA

TWENTY-FIFTH REGULAR SESSION

OF THE LEGISLATURE

UNDER THE CONSTITUTION OF 1921



SEVENTH WEEK

Ending June 30, 1962

BY AUTHORITY

C. C. AYCOCK

Lieutenant Governor
and President of the Senate

C. W. ROBERTS

Secretary
Louisiana Senate

J. THOS. JEWELL

Speaker
House of Representatives

W. CLEGG COLE

Clerk
House of Representatives

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June 4—
Read by title and referred to the Committee on Judiciary, Section B

HOUSE BILL No. 1221—

By Mr. Angelle (By Request):

AN ACT

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

HOUSE

June 3—
Read by title.

June 4—
Read by title and referred to the Committee on Judiciary, Section B

June 11—
Reported favorably.

June 14—
Read by title, ordered engrossed and passed to its third reading.

June 19—
Returned to the Calendar subject to call.

June 25—
Made Special Order of the Day for Wednesday, June 27.

June 27—
Called from the Calendar.
Read by title. Considered in Committee of the Whole, reported with amendments, amended, read the third time in full, as amended, roll called on final passage, yeas 80, nays 16. Finally passed, title adopted, ordered to Senate.

SENATE

June 28—
Received in the Senate.
R.S., read first and second time by title and referred to the Committee on Banking.
Rules suspended.
Recommitted to the Committee on Judiciary, Section B

HOUSE BILL No. 1222—

By Mr. Boozman:

AN ACT

To amend and re-enact Paragraph (6) of Subsection (A) of Section 742 of Title 17 of the Louisiana Revised Statutes of 1950, and to amend said Subsection (A) by adding thereto a new Paragraph (7), all relative to qualifications for eligibility to receive old age assistance for teachers from funds dedicated or allocated out of the State Public School Fund, to further provide for qualifications for eligibility.

HOUSE

June 3—
Read by title.

June 4—
Read by title and referred to the Committee on Judiciary, Section B

June 11—
Reported without action by the Committee on Judiciary, Section B, with recommendation that it be recommitted to the Committee on Joint Committee on Retirement.

June 12—
Recommitted to the Committee on Joint Committee on Retirement

June 13—
Reported with amendments.

June 18—
Read by title, amended, ordered engrossed and passed to its third reading.

June 20—
Read third time in full, roll called on final passage, yeas 94, nays 0. Finally passed, title adopted, ordered to Senate.

SENATE

June 21—
Received in the Senate.
R.S., read first and second time by title and referred to the Joint Committee on Retirement

HOUSE BILL No. 1223—

By Mr. Casey (By Request):

AN ACT

To divide the City of New Orleans into wards, representative districts and municipal districts; providing that all public officials elected and now holding office from the wards, representative districts, municipal districts, councilmanic districts and senatorial districts of the City of New Orleans, as such wards and districts were described and established as of May 1, 1963 in Section 2 of Act 159 of 1912 and Section.....of the Charter of the City of New Orleans and in Sections 4 and 5 of Article III of the Constitution of Louisiana, shall serve the remainder of the terms for which they were elected;

HOUSE

June 3—
Read by title.

June 4—
Read by title and referred to the Committee on Judiciary, Section A

HOUSE BILL No. 1224—

By Mr. Barranger:

AN ACT

To authorize the governing authorities of all municipalities in this State to adopt ordinances regulating the business of purchasing, selling, transferring, exchanging, repairing or storing of new or second hand bicycles, parts and accessories for bicycles, at wholesale or retail, and to provide for the registration of description and ownership of bicycles; and repealing Sections 491 through 501 of Title 51 of the Louisiana Revised Statutes of 1950.

HOUSE

June 3—
Read by title.

June 4—
Read by title and referred to the Committee on Judiciary, Section B

June 7—
Reported favorably.

June 11—
Read by title, ordered engrossed and passed to its third reading.

June 13—
Read third time in full, roll called on final passage, yeas 87, nays 2. Finally passed, title adopted, ordered to Senate.

SENATE

June 14—
Received in the Senate.
R.S., read first and second time by title and referred to the Committee on Judiciary, Section A

HOUSE BILL No. 1225—

By Mr. Womack and Senator Gilbert:

AN ACT

To provide for the manner of fixing of the salary of the President and the Secretary of the Board of Commissioners of the Tensas Basin Levee District, and repealing all laws or parts of laws, in conflict herewith.

HOUSE

June 3—
Read by title.

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OFFICIAL JOURNAL
OF THE
HOUSE OF REPRESENTATIVES
OF THE
STATE OF LOUISIANA

THIRTY-SECOND DAY'S PROCEEDINGS

Twenty-fifth Regular Session of the
Legislature Under the Adoption of
the Constitution of 1921

House of Representatives
State Capitol
State of Louisiana

Wednesday, June 27, 1962, Baton Rouge, La

The House was called to order at 1:00 o'clock p.m., by
Hon. J. Thos. Jewell, Speaker of the House of Representatives

ROLL CALL

The roll being called, the following members answered to
their names:

PRESENT

Messrs.—		
Mr. Speaker	Crane	Mollere
Adams	Decuir	Morgan
Alford	Delony	Munson
Allen, H.	Downes	Murtes
(Tangipahoa)	Dupont	Napper
Allen, I. J.	Dupuis	O'Brien
(Jackson)	Durand	Ordeneaux
Altmyer	Dyer	Peck
Ammons	Dyson	Perron
Angelle	Falgout	Pfister
Anzelmo	Fields	Rand
Arceneaux	Floyd	Rau
Ashley	Fondren	Richmond
Barranger	Fulco	Roy
Beanel	Garrett	Sanders
Beeson	Gibbs	Schoenberger
Bernard, D. A.	Gregson	Schwegmann
(Lafourche)	Grizzaffi	Seaman
Bernard, E. L.	Himel	Sheridan
(W. B. R.)	Hoover	Simon
Bernhard	Jack	Smith, B.
Bertrand	John	(Avoyelles)
Bethard	Jumonville	Smith, P. K.
Bickford	Knowles	(Winn)
Bolden	Lancaster	Smither
Boozman	Landrieu	Steen
Branton	Leake	Stinson
Brown, A. D.	LeBreton	Strother
(Caddo)	Lehmann	Sullivan
Brown, J. M.	Lewis	Sylvester
(Calcasieu)	Matassa	Tapper
Brown, W. K.	McCormack	Thomas
(Grant)	McCrory	Triche
Buras	McGehee	Vesich
Casey	McGittigan	Villar
Ciacello	McHenry	Womack
Cooper	McLain	
Crais	Michot	
Total—103.		

ABSENT

Messrs.—
Foshee
Total—2.
Total—2.

The Speaker of the House announced that there were 103
members present and a quorum.

Prayer

Prayer was offered by the Rev. Lee Porter.

Reading of the Journal

On motion of Mr. I. J. Allen, the reading of the Journal
was dispensed with.

On motion of Mr. I. J. Allen, the Journal of yesterday was
adopted.

Special Order Of The Day

House Bills and Joint Resolutions on
Third Reading and Final Passage

The following entitled House Bills and Joint Resolutions
on third reading and final passage were taken up and acted
upon as follows:

HOUSE BILL No. 1221—
By Mr. Angelle (By Request):
AN ACT

To define the bank holding company, to prohibit the forma-
tion of new bank holding companies, and to control the
future expansion of existing bank holding companies and
of their subsidiaries.

It is taken up on its third reading.

On motion of Mr. Anzelmo the House resolved itself into
a Committee of the Whole to take into consideration the
bill.

The committee having risen, the chairman, Mr. Bertrand
reported to the House that the Committee of the Whole had
had under consideration:

HOUSE BILL No. 1221—
By Mr. Angelle (By Request):
AN ACT

To define the bank holding company, to prohibit the forma-
tion of new bank holding companies, and to control the
future expansion of existing bank holding companies and
of their subsidiaries.

Reported with the following amendments:

HOUSE FLOOR AMENDMENTS

Amendments proposed by Mr. Anzelmo to House Bill No.
1221 by Mr. Angelle.

Amend Printed bill as follows:

AMENDMENT No. 1—
On page 1, between lines 7 and 8, insert the following:
"Be it enacted by the Legislature of Louisiana:"

AMENDMENT No. 2—
On page 1, strike out line 8 in its entirety and insert
in lieu thereof the following:
"Section 1. Declaration of Policy."

AMENDMENT No. 3—
On page 1, strike out line 21 in its entirety and insert in
lieu thereof the following:
"Section 2. Definitions."

AMENDMENT No. 4—
On page 3, strike out lines 11 and 12 in their entirety and
insert in lieu thereof the following:
"Section 3. Prohibitions upon Acquisition of Bank Shares
or Assets."

AMENDMENT No. 5—
On page 3, strike out line 29 in its entirety and insert in
lieu thereof the following:
"Section 4. Penalties."

AMENDMENT No. 6—
On page 4, strike out line 8 in its entirety and insert in
lieu thereof the following:
"Section 5. Administration."

AMENDMENT No. 7—
On page 4, strike out line 13 in its entirety and insert in
lieu thereof the following:
"Section 6. Savings Clause."

AMENDMENT No. 8—
On page 4, strike out line 21 in its entirety and insert in
lieu thereof the following:
"Section 7. Severability."

AMENDMENT No. 9—
On page 4, after line 26 add the following lines:
"Section 8. Repeal.
All laws or parts of laws in conflict herewith are hereby
repealed."

HOUSE FLOOR AMENDMENTS

Amendments proposed by Mr. Anzelmo to House Bill No.
1221 by Mr. Angelle

Amend Printed bill as follows:

AMENDMENT No. 1—
On page 1, line 22, following the word "company" and
preceding the word "in", insert the words "foreign or
domestic".

AMENDMENT No. 2—
On page 2, line 10, following the word "solicitation"
insert the following:

(C) nor shall this act apply to shares acquired by a bank
holding company which is a bank, or by any banking
subsidiary of a bank holding company, in satisfaction of a
debt previously contracted in good faith, but such bank
holding company or such subsidiaries shall dispose of such
shares within a period of two years from the date on which
they were acquired or from the date of enactment of this
Act, whichever is later.

(D) nor shall this act apply to shares which are held
or acquired by a bank holding company which is a bank
or by any banking subsidiary of a bank holding company,
in good faith in a fiduciary capacity; except where such
shares are held for the benefit of the shareholders of such
bank holding company or any of its subsidiaries, or to shares
which are of the kinds and amounts eligible for invest-
ment by National banking associations under the provi-
sions of section 5136 of the Revised Statutes, or to shares
lawfully acquired and owned prior to the date of enactment
of this Act by a bank which is a bank holding company,
or by any of its wholly owned subsidiaries.

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AMENDMENT No. 3—

On page 2, line 12, delete the words "joint venture".

AMENDMENT No. 4—

On page 2, line 13, delete the figure "(1)".

AMENDMENT No. 5—

On page 2, line 15, delete the words "or (2) any corpora-" and delete lines 16 through 22 in their entirety.

AMENDMENT No. 6—

On page 3, line 21, following the word "thereof" change the period to a semi-colon and add the following:

(5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued.

AMENDMENT No. 7—

On page 1, line 24, delete the figure "15" and insert in lieu thereof the figure "25"

AMENDMENT No. 8—

On page 1, line 28, delete the number "15" and insert in lieu thereof "25"

AMENDMENT No. 9—

On page 2, line 27, delete the number "15" and insert in lieu thereof the figure "25"

AMENDMENT No. 10—

On page 3, line 1, delete the number "16" and insert in lieu thereof the number "25"

AMENDMENT No. 11—

On page 3, line 19, strike out the number "5" and insert in lieu thereof the figure "25"

On motion of Mr. Anzelmo the report of the committee, together with the amendments, was adopted.

The Bill was read in full, as amended.

Mr. Angelle moved the final passage of the Bill.

ROLL CALL

The roll was called with the following result:

YEAS

Messrs.—

Adams	Cooper	Napper
Alford	Crane	Ordoneaux
Allen, H.	Decuir	Peck
(Tangipahoa)	Delony	Perron
Allen, I. J.	Downes	Pfister
(Jackson)	Dupont	Rand
Altmyer	Dupuis	Rau
Ammons	Durand	Richmond
Angelle	Dyer	Roy
Anzelmo	Falgout	Sanders
Arceneaux	Floyd	Schoenberger
Ashley	Fondren	Schwegmann
Becnel	Garrett	Seaman
Beeson	Gibbs	Sheridan
Bernard, D. A.	Hoover	Smith, B.
(Lafourche)	Jack	(Avoyelles)
Bernard, E. L.	John	Smith, P. K.
(W. L. R.)	Jumonville	(Winn)
Bernhard	Lancaster	Steen
Bertrand	Lehmann	Strother
Bethard	Lewis	Sullivan
Bickford	Matassa	Sylvester
Bolden	McCormack	Tapper
Branton	McCrary	Thomas
Brown, J. M.	McGehee	Triche
(Calcasieu)	McGittigan	Vesich
Brown, W. K.	McHenry	Villar
(Grant)	Michot	Womack
Buras	Morgan	
Clacelo	Munson	
Total—86.		

NAYS

Messrs.—

Barranger	Dyson	Landrieu
Boozman	Fulco	LeBreton
Brown, A. D.	Gregson	O'Brien
(Caddo)	Grizzaffi	Smither
Casey	Himel	Stinson
Craus	Knowles	
Total—16.		

ABSENT

Messrs.—

Mr. Speaker	McLain	Smith, J. K.
Fields	Mollere	(Caddo)
Foshee	Murtes	
Leake	Simon	
Total—9.		

And the Bill was finally passed.

And the Chair declared that the above Bill was finally passed.

The title to the above Bill was read and adopted.

Mr. Angelle moved to reconsider the vote by which the above Bill was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

LIST OF DIRECTORS

The WHITNEY National Bank

Located at NEW ORLEANS, LOUISIANA

Comptroller of the Currency,
Washington, D. C.

The following is a list of all the directors elected at the November 29, 1961 ^{Special} ~~annual~~ meeting of shareholders of The Whitney National Bank of New Orleans, La. held on November 29, 1961, the required notice of which was given, a director, other officer, or employee having acted as proxy at said meeting.

106,497 shares of the common stock of the bank were represented at the meeting.

 shares of the preferred stock of the bank were represented at the meeting.

NAME	POST OFFICE ADDRESS
1	
2	SEE ATTACHED LIST
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	

At least two-thirds of the directors are residents of, and have resided for at least one year (immediately preceding their election), in the State, Territory, or District in which the Association is located, or within one hundred miles of the location of the principal office of the Association.

Respectfully,

Ed W. J. J. J. J.
President or Cashier.

(*Insert "Adjourned" in case of adjournment of meeting.)

IMPORTANT

There is no authority for the election of directors in advance of prescribed time, and if annual meeting of shareholders is held at a time earlier than that specified in the articles of association another meeting will be required.

When the day fixed for the regular annual meeting of the shareholders of a national bank falls on a legal holiday, the meeting shall be held on the next following banking day.

If a meeting is held at a time later than that specified in articles of association, explanation should be made under "Remarks" on the back of the sheet.

If number of directors elected does not correspond with the requirements of the articles of association on file here, this should also be explained. [OVER]

16-5555-21

Filed August 13, 1962

EXHIBIT 3

LIST OF DIRECTORS

<u>Name</u>	<u>Post Office Address</u>
1. Edward B. Benjamin	1213 Whitney Bldg., N. O., La.
2. Keck W. Berry	c/o Whitney Natl. Bank, N.O., La.
3. Hollis H. Crosby	Crosby, Mississippi
4. E. D. Crowell, Jr.	Long Leaf, Louisiana
5. W. E. DePass, Jr.	c/o Standard Supply & Hardware Co., P. O. Box 630, N. O. 7, La.
6. Crawford H. Ellis	P. O. Box 219, N. O., La.
7. Clifford P. Favrot	209 Carondelet Bldg., N. O. 12, La.
8. James Gilly, Jr.	c/o Whitney Natl. Bank, N. O., La.
9. Leon Godchaux	c/o The Leon Godchaux Clothing Co., Inc., 826 Canal St., N. O., La.
10. Leon Heymann	c/o Krauss Co., Inc., 1201 Canal St., N. O., La.
11. H. T. Howard, Jr.	4534 St. Charles Ave., N.O. 15, La.
12. George A. Lutz	624 Gent St., N. O. 16, La.
13. Joseph T. Lykes, Jr.	Commerce Bldg., N. O., La.
14. Malcolm L. Monroe	c/o Monroe and Leann, Whitney Bldg., N. O., La.
15. Jos. W. Montgomery	c/o United Fruit Co., 321 St. Chase St., N. O. 12, La.
16. Ralph P. Nolan	Algiers Ferry Plaza, Algiers, La.
17. Edgar B. Stern, Jr.	521 Royal St., N. O. 16, La.
18. W. O. Turner	c/o Louisiana Power & Light Co. Algiers, La.
19. Morgan Whitney	c/o Whitney Natl. Bank, N. O., La.
20. Laurence W. Williams	c/o Williams, Inc., Whitney Bldg., New Orleans, La.

EXHIBIT 3

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Filed August 13, 1962

EXHIBIT 4

LIST OF DIRECTORS

Whitney National Bank in Jefferson Parish (Organizing)
(Name of Bank)

Located at Jefferson Parish, Louisiana

Comptroller of the Currency,
Washington, D. C.

The following is a list of all the directors elected at the initial meeting of shareholders of The Whitney National Bank in Jefferson Parish (organizing) of Jefferson Parish, La. held on May 10, 1962, the required notice of which was given.

20,000 shares of the common stock of the bank were represented at the meeting.

NAME	POST OFFICE ADDRESS
W. O. Turner	112 Delaronde Street, Algiers, La.
A. B. Paterson, Jr.	1233 West Bank Expressway, Harvey, La.
W. K. DePass, Jr.	832 Echoupitoulas Street, New Orleans, La.
Leon Godchaux, Jr.	828 Canal Street, New Orleans, La.
Henry J. Angelle	1200 S. Carrollton Avenue, New Orleans, La.
C. H. Botnick	1205 St. Charles Avenue, New Orleans, La.
James Gilly, Jr.	228 St. Charles Street, New Orleans, La.
Sterling Dunn	201 Baronne Street, New Orleans, La.

I hereby certify that at least two-thirds of the directors are residents of, and have resided for at least one year (immediately preceding their election), in the State, Territory or District in which the Association is located, or within one hundred miles of the location of the principal office of the Association.

Respectfully,

James Gilly, Jr.

Keesh W. Perry
Correspondent for the Organizers.
Keesh W. Perry
228 St. Charles Street, New Orleans, La.

Subscribed and sworn to before me:
this 10th day of May, 1962.

Melvin I. Schwartzman
Notary Public
My Commission is Issued for Life.

MELVIN I. SCHWARTZMAN
Notary Public, Parish of Orleans, State of La.
My Commission is Issued for Life

EXHIBIT 4



Filed August 13, 1962

STATEMENT OF POINTS AND AUTHORITIES OF INTERVENING
DEFENDANT

APPENDIX A

LIST OF BANK HOLDING COMPANIES AND THEIR AFFILIATES OPERATING IN STATES WHICH
PROHIBIT OR LIMIT BRANCH BANKING*1. Bank Holding Companies and Their Subsidiary Banks Operating in States Which
Prohibit Branch Banking*

State	Bank Holding Company Operating in State	Affiliates in State and Location	
Colorado	Western Bancorporation	American National Bank,	Denver
		Englewood State Bank,	Englewood
		The First National Bank,	Fort Collins
Florida	Atlantic Trust Company	First Atlantic Nat'l Bank,	Daytona Beach
		The First National Bank,	Gainesville
		Atlantic National Bank,	Jacksonville
		Lake Forest Atlantic Bank,	"
		Southside Atlantic Bank,	"
		Springfield Atlantic Bank,	"
		Palatka Atlantic Nat'l Bank,	Palatka
		Sanford Atlantic Nat'l Bank,	Sanford
		Atlantic National Bank of West Palm Beach,	West Palm Beach
	Barnett National Securities Corp.	The Barnett National Bank,	Cocoa
		The Barnett National Bank,	Deland
		The Barnett National Bank,	Jacksonville
		Murray Hill Barnett Bank,	"
		St. Augustine National Bank,	St. Augustine
Illinois	Illinois Shares Corporation	State Bank of Blue Island,	Blue Island
		Pullman Trust & Savings Bank,	Chicago
	General Bancshares Corp.	Standard State Bank,	"
		Bank of Benton,	Benton
		Illinois State Bank,	Quincy
		Bank of Zeigler,	Zeigler
	Amalgamated Clothing Workers	Amalgamated Trust & Savings Bank,	Chicago
Montana	First Bank Stock Corp.	Midland National Bank,	Billings
		Valley State Bank,	Billings
		First National Bank,	Bozeman
		Metals Bank & Trust Co.,	Butte
		Forsyth State Bank,	Forsyth
		First Chouteau County Bank,	Fort Benton

	First National Bank,	Great Falls
	First Westside Nat'l Bank,	"
	First National Bank	Havre
	First Nat'l B. & T. Co.,	Helena
	First Trust Co.,	Helena
	First National Bank,	Lewistown
	First National Park Bank,	Livingston
	First National Bank,	Miles City
	Southside National Bank,	Missoula
	Western Montana Nat'l	
	Bank,	"
Montana Shares, Inc.	Northern Mont. State	
	Bank,	Big Sandy
	Miners National Bank,	Butte
	First State Bank,	Chinook
	Liberty County Bank,	Chester
	Citizens Bank of Montana,	Havre
	Farmers-Merchants Bank,	Rudyard
Northwest Bancorporation	Daly Bank & Trust Co.,	Anaconda
	Billings State Bank,	Billings
	First National Bank,	Dillon
	Great Falls National	
	Bank,	Great Falls
	Union Bank & Trust Co.,	Helena
	First National Bank,	Kalispell
	Northwestern Bank,	Lewistown
Western Bancorporation	Bank of Glacier County,	Cut Bank
	The Conrad National	
	Bank,	Kalispell
	Montana Bank,	Great Falls
Texas	Texas Bank and Trust	
	Company of Dallas	
	Texas Bank and Trust	
	Co.,	Dallas
	First State Bank,	Eustace
	Powell State Bank,	Powell
	First National Bank,	Richland
	West National Bank,	West
	Riverside State Bank,	Fort Worth
The Fort Worth National	South Fort Worth State	
Bank	Bank,	"
	Westside State Bank,	"
C.B. Investment Corp.	Gulfgate State Bank,	Houston
	LaPorte State Bank,	LaPorte
	Citizens State Bank,	Sealy
	Wallis State Bank,	Wallis

*II. Bank Holding Companies and Their Subsidiary Banks Operating in States Which Limit Branch Banking**

State	Bank Holding Company Operating in State	Affiliates in State and Location	
Iowa	Brenton Companies	Dallas County State Bank,	Adel
		Wright County State Bank,	Clarion
		Brenton State Bank,	Dallas Center
		National Bank of Des Moines,	Des Moines
		Northwest Des Moines Nat'l Bank,	"
		South Des Moines Nat'l Bank,	"
		Eagle Grove State Bank,	Eagle Grove
		Palo Alto County State Bank,	Emmetsburg
		Poweshiek County State Bank,	Grinnell
		Warren County B. & T. Co.,	Indianola
		Jefferson State Bank,	Jefferson
		First National Bank,	Perry
		Benton County B. & T. Co.,	Vinton
	Northwest Bancorporation	First National Bank,	Denison
		Iowa-Des Moines Nat'l Bank,	Des Moines
		First National Bank,	Mason City
Maine	Eastern Trust & Banking Company	Live Stock National Bank,	Sioux City
		Eastern T. & B. Co.,	Bangor
		Guilford Trust Company,	Guilford
New Mexico	Western Bancorporation	Lincoln Trust Co.,	Lincoln
		Millinocket Trust Co.,	Millinocket
		Bank of New Mexico,	Albuquerque
		First State Bank,	Gallup
		New Mexico B. & T. Co.,	Hobbs
South Dakota	First Bank Stock Corporation	Roswell State Bank,	Roswell
		Santa Fe National Bank,	Santa Fe
		Aberdeen National Bank,	Aberdeen
		First National Bank,	Clark
		First Potter County Bank,	Gettysburg
		First State Bank,	Highmore
		First National Bank,	Lemmon
		First National Bank,	Miller
		Nat'l Bank of South Dakota,	Sioux Falls

* States which have statutes prohibiting branch banking in other counties only when a bank already exists in the county and which are similar to the Louisiana branch banking statute.

	Northwest Bancorporation	First National Bank, First Nat'l Bank of the Black Hills, Northwest Security Nat'l Bank, First Citizens Nat'l Bank,	Aberdeen Rapid City Sioux Falls
Washington	Old National Corporation	First National Bank, The Old National Bank,	Watertown Spokane "
	Union Bond & Mortgage Company	Forks State Bank, First National Bank, First American Nat'l Bank, Bank of Sequim,	Forks Port Angeles Port Townsend Sequim

(This information is contained in a publication by the Association of Registered Bank Holding Companies, entitled "Bank Holding Company Facts—1961," dated July, 1961.)

Filed August 13, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF GENUINE ISSUES FILED BY INTERVENING
DEFENDANT WHITNEY NATIONAL BANK IN JEFFERSON
PARISH IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUM-
MARY JUDGMENT.

Intervening defendant Whitney National Bank in Jefferson Parish files this Statement in accordance with the provisions of Local Civil Rule 9(h).

Intervening defendant has today filed its own Motion for Summary Judgment and agrees with plaintiffs that there does not exist in this case any genuine issue of material fact. The case is accordingly one appropriate for disposition by summary judgment. Intervening defendant, however, joins in Defendant Comptroller's Opposition to Plaintiffs' Cross Motion filed August 10, 1962, and takes exception to the inclusion in Plaintiffs' Statement of Material Facts, filed herein pursuant to Rule 9(h), of substantial quantities of loose conclusory language, quotations, legal argument and other material. The relevant facts which present the controlling questions of law herein are more succinctly and accurately summarized in intervening defendant's Statement of Material Facts As To Which There Is No Genuine Issue, filed today in connection with its Motion for Summary Judgment.

Respectfully submitted,

W. GRAHAM CLAYTOR, JR.,
701 Union Trust Building,
Washington 5, D. C.

MALCOLM L. MONROE,
1424 Whitney Building,
New Orleans 12, Louisiana.

August 13, 1962.

Filed August 22, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

RESPONSE OF DEFENDANT COMPTROLLER OF THE CURRENCY
TO MOTION OF INTERVENING DEFENDANT FOR SUMMARY
JUDGMENT

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion of the Whitney National Bank in Jefferson Parish, Intervening defendant herein, for summary judgment. The supporting statement of material facts, filed by said intervening defendant pursuant to Local Civil Rule 9(h), is accurate and represents a fair statement of the essential facts in this case.

In addition to granting said motion, the Court should also grant the motion for summary judgment (or in the alternative the cross-motion to dismiss) filed herein by the defendant Comptroller of the Currency. The cross-motion of plaintiffs for summary judgment should be denied.

JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

DONALD B. MACGUINEAS,
DAVID V. SEAMAN,
*Attorneys, Department of Justice
Attorneys for Defendant Comptroller
of the Currency.*

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed August 22, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

RESPONSE OF DEFENDANT COMPTROLLER OF THE CURRENCY
TO MOTION OF INTERVENING DEFENDANT FOR LEAVE TO
AMEND ANSWER

Comes now the defendant Comptroller of the Currency, through his undersigned counsel, and states to the Court that he has no objection to the granting of the motion of the Whitney National Bank in Jefferson Parish, intervening defendant herein, for leave to file and serve a supplemental answer.

JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

DONALD B. MACGUINEAS,
DAVID V. SEAMAN,
*Attorneys, Department of Justice
Attorneys for Defendant Comptroller
of the Currency.*

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed September 4, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION OF J. W. JEANSONNE, STATE BANK COMMISSIONER
OF THE STATE OF LOUISIANA TO INTERVENE AS A PLAINTIFF
HEREIN.

J. W. JEANSONNE, State Bank Commissioner of the State of Louisiana, respectfully moves the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for leave to intervene as a plaintiff in this action in order to assert the claim for relief set forth in his proposed complaint, a copy of which is hereto attached. The grounds for this motion are:

1. The representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound, directly or indirectly, by a judgment in this action; and

2. Applicant's claim and the main action have questions of law and fact in common; and

3. The plaintiffs herein rely, as grounds for their claims, upon Title 12 U.S.C. 36(c), Louisiana Revised Statutes 6:54; Title 12 U.S.C. 1841, et seq., and Act No. 275 of the Louisiana Legislature (Regular Session, 1962), while defendant and the intervening defendant herein, as grounds for their defense in this action, contend that the aforesaid Louisiana Statutes do not apply to the proposed actions of the defendant complained of in this proceeding; or that Louisiana Act 275 of 1962 is unconstitutional and void.

By law applicant for intervention is charged with the administration and enforcement of the banking laws of the State of Louisiana, including Act No. 275 of 1962, and it is accordingly essential to applicant's just and proper administration and application of said Louisiana Statutes, insofar as they affect all banks, bank holding companies and bank holding company subsidiaries doing business in

Louisiana, or which seek to do business in Louisiana, that applicant protect and foster in this action the purpose, intent and meaning of the Louisiana Statutes, the uniform application thereof and the public policy of the State of Louisiana as enunciated therein.

4. Intervention by the applicant will not delay or prejudice the adjudication of the rights of the original parties.

Applicant for intervention has noted the pendency of defendant's motion for summary judgment and motion to dismiss the complaint herein; plaintiffs' cross-motion for summary judgment; and intervening defendant's cross-motion for summary judgment, and will, if granted leave to intervene, file his opposition to defendant's and intervening defendant's said motions and will cross-move for summary judgment in favor of himself and the plaintiffs herein.

/s/ BENTLEY G. BYRNES,
*Attorney for Applicant for Intervention, and
Assistant Attorney General of Louisiana.*

/s/ EDWARD L. MERRIGAN,
Local Counsel of Record to Applicant.

August 31, 1962.

Filed September 10, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

Civil Action No. 1857-62

COMPLAINT OF INTERVENING PLAINTIFF, J. W. JEANSONNE,
LOUISIANA STATE BANK COMMISSIONER

J. W. JEANSONNE, the State Bank Examiner of Louisiana, intervening plaintiff herein, as and for his Complaint, respectfully alleges:

1

Intervening plaintiff is the State Bank Commissioner of Louisiana, and as such, is the officer charged with the administration of the banking laws of the State of Louisiana, including Louisiana Revised Statutes Title 6, Section 54, and Louisiana Act 275 of 1962 which became effective as the law of the State of Louisiana on July 10, 1962.

2

Intervening plaintiff files this Complaint on his own behalf as the State Bank Commissioner of Louisiana and on behalf and for the benefit of all banks located and doing business in the State of Louisiana which are subject to the jurisdiction of the State Bank Commissioner and which are subject to the provisions, restrictions and limitations provided in 12 U.S.C. 36(c) and L.R.S. 6:54, 12 U.S.C. 1841, et seq., and Louisiana Act 275 of 1962.

3

Defendant herein is the Comptroller of the Currency, an officer of the United States Government, who maintains his office in the Treasury Department within the territorial limits of the City of Washington, District of Columbia. Intervening defendant herein, Whitney National Bank in Jefferson Parish, is, upon information and belief, a subsidiary of a so-called bank holding corporation known as and by the

name of Whitney Holding Corporation, which, in turn, is a business corporation caused to be organized by the Whitney National Bank of New Orleans pursuant to the corporation laws of Louisiana.

4

The jurisdiction of the Court over the subject matter of this Complaint is predicated upon the provisions of 28 U.S.C. 1331, this being an action arising under the laws of the United States and statutes of Louisiana enacted under and pursuant to grants of authority or jurisdiction provided by the laws of the United States, and the matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs; and upon the provisions of the District of Columbia Code (1961 Edition), which give this Court jurisdiction over all cases in law or in equity between parties, any of which shall be resident or found within the District of Columbia and which involve an amount in controversy in excess of the sum referred to hereinabove; and upon Rule 24 of the Federal Rules of Civil Procedure, which extends to intervening plaintiff herein the right to intervene in this action.

5

Heretofore and for approximately seventy-nine years, the Whitney National Bank of New Orleans has operated banking offices and facilities wholly within the City of New Orleans, Parish of Orleans, State of Louisiana; and said Bank presently conducts such operations in the Parish of Orleans under a certificate or certificates issued by the Comptroller of the Currency under the National Bank Act (12 U.S.C. 21, et seq.). The said Whitney National Bank of New Orleans is by far the largest banking institution in the City of New Orleans and the State of Louisiana, and is one of the largest banks in the entire southern portion of the United States. On June 30, 1961, the said Bank held approximately Thirty-nine (39%) percent of the total deposits in all banks in the Parish of Orleans, State of Louisiana, and Forty-four (44%) percent of all deposits of individuals, partnerships and corporations, although there are numerous other State and National Banks with offices and banking facilities in said Parish.

In addition, the said Whitney National Bank of New Orleans has also managed to accumulate and hold in its

banking facilities, located in New Orleans (Parish of Orleans), deposits of individuals, partnerships, and corporations emanating from the East Bank of the Mississippi River in Jefferson Parish, Louisiana (a Parish beyond the limits of Orleans), in an aggregate amount exceeding Thirty (30%) percent of all such deposits held by all banks having main banking offices and facilities in the same area of Jefferson Parish, Louisiana.

6

Under long standing provisions of the National Bank Act (12 U.S.C. 36(c)(e)(f)), National Banks such as Whitney National Bank, have been prohibited by law from opening branches or additional banking offices or facilities in any county, parish or state, other than that in which its main office or banking facilities are located, unless state chartered banks are likewise specifically authorized by state law to so expand.

7

The laws of the State of Louisiana do not authorize State banks to establish, operate and expand new branch or additional banking facilities to any point within the State. On the contrary, the statutes of Louisiana (L.R.S. 6:54), as written and as historically applied by the Louisiana Bank Commissioner, expressly prohibit any bank with more than \$100,000.00 capital from opening a branch or an additional banking facility in any Parish (i.e. county) beyond the Parish in which its main office is located, if another bank is already located and operating in the Parish into which the large bank would like to expand.

8

The following banks, chartered under the laws of the State of Louisiana and subject to the jurisdiction of intervening plaintiff herein, are already located and have been operating in Jefferson Parish, Louisiana, and have invested large amounts of capital in their facilities so located, in reliance upon the aforementioned provisions and protections of the law:

Metairie Savings Bank & Trust Company
 Merchants Trust & Savings Bank
 Metropolitan Bank of Jefferson Parish

Furthermore, the following banks, chartered under the laws of the State of Louisiana and subject to the jurisdiction of intervening plaintiff herein, are located in and are and have been operating in Orleans Parish (City of New Orleans), Louisiana, in direct competition with the aforementioned Whitney National Bank of New Orleans, and like Whitney, are prohibited by the said statutory prohibitions from establishing any branches or banking offices beyond the limits of Orleans Parish in Jefferson Parish, Louisiana:

The Bank of New Orleans & Trust Company
The Bank of Louisiana in New Orleans

Upon information and belief, in or about 1959, and with complete knowledge of the aforementioned Federal and State statutory prohibitions, Whitney National Bank of New Orleans commenced to consider ways and means whereby the prohibitions of the said Federal and State statutes might be circumvented so that Whitney National Bank of New Orleans would be able to locate, open and operate new branch or additional bank facilities beyond the limits of the Parish of Orleans and within that part of Jefferson Parish on the East bank of the Mississippi River wherein the State banks listed in Paragraph 8 hereinabove had already invested very large sums of capital and had established and were operating extensive, complete and adequate banking facilities.

After engaging in various ex parte conferences and meetings with the Comptroller of the Currency and various of his agents and employees, Whitney National Bank of New Orleans, upon information and belief, fashioned, adopted and executed the following corporate maneuvers in an attempt to circumvent the prohibitions of the aforementioned Federal and State statutes:

(a) Whitney National Bank caused to be organized a Louisiana corporation named "Whitney Holding Corporation". The sole initial capital investment of this corporation was \$350,000.00 taken directly from the capital funds

of the Whitney National Bank. In return for this investment said Bank received Fifty-six Hundred (5600) shares of stock of Whitney Holding Corporation which were distributed to the Bank stockholders as a stock dividend.

(b) Whitney National Bank then caused to be organized a non-operating association in the City of New Orleans, Parish of Orleans, under the name "Crescent City National Bank", to which the Comptroller of the Currency issued a national banking charter with full knowledge that said Crescent City National Bank was created, not to do business as a bank but solely for the purpose of serving as a separate entity into which Whitney National Bank of New Orleans could be merged. The Whitney Holding Corporation (completely controlled by Whitney National Bank, as aforesaid) then invested the entire \$350,000.00 it received from Whitney National Bank in this non-operating banking association and took in exchange therefor all of this "bank's" authorized stock.

(c) Whitney National Bank merged into the non-operating banking association, Crescent City National Bank, under the charter of said Crescent City National Bank, issuing Whitney Holding Corporation stock to the former stockholders of the Whitney National Bank and simultaneously changing the name of said bank from Crescent City National Bank to the original name Whitney National Bank of New Orleans, the result of such corporate maneuvers being that the Whitney Holding Corporation owned all of the stock in the merged Whitney National Bank, and the shareholders of the former Whitney National Bank of New Orleans owned all of the stock in the Whitney Holding Corporation.

(d) Whitney National Bank of New Orleans then provided \$650,000.00 of its capital funds to the Whitney Holding Corporation, which funds were to be employed by Whitney Holding Corporation to create a branch bank in Jefferson Parish, Louisiana under the name Whitney National Bank in Jefferson Parish. All stock in the branch bank, so organized, was issued to Whitney Holding Corporation and Whitney National Bank in Jefferson Parish was then to commence business in Jefferson Parish with \$650,000.00 in capital supplied directly by Whitney National Bank in New Orleans, thereby completely circumventing and evading the prohibiting statutes.

12

The aforementioned plan for circumvention of Federal and State banking laws and of the said proposal to commence a banking business in Jefferson Parish, Louisiana were not only in direct violation of the letter and intent of 12 U.S.C. 36 and Louisiana Revised Statutes 6:54, but were also in violation of the Federal Bank Holding Company Act (12 U.S.C. 1841, et seq.) and more particularly 12 U.S.C. 1845, 1846 and Louisiana Act No. 275 of 1962, which became effective on July 10, 1962.

13

In spite of the foregoing, the defendant, Comptroller of the Currency, without holding hearings and in the face of the aforementioned prohibitions of both Federal and State law, nevertheless approved the organization of the non-operating bank, Crescent City National Bank with capital funds supplied by the Whitney National Bank of New Orleans, the merger of Whitney National Bank of New Orleans into this non-operating bank, and the proposed branch operations of Whitney National Bank in Jefferson Parish under the name Whitney National Bank in Jefferson Parish. Notwithstanding the fact that the defendant, Comptroller of the Currency, well knew that the only reason for the intricate corporate maneuvers of Whitney National Bank were to enable it to expand its operations into Jefferson Parish, he is presently asserting that if this Honorable Court dissolves the injunction entered by Judge Holtzoff on July 10, 1962, he will immediately issue a certificate authorizing intervening defendant to conduct banking operations in Jefferson Parish, and has, in fact, filed an affidavit herein under date of August 9, 1962 wherein he states:

"5. On July 10, 1962, the Governor of the State of Louisiana approved Act No. 275, entitled 'An Act to define the bank holding Company,' to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries.

"6. Upon consideration of these subsequent developments, and after careful examination of the Louisiana statute, I have concluded that there has occurred no reason to alter the Comptroller's prior determination

that a certificate of authority should be issued to Whitney National Bank in Jefferson Parish, pursuant to 12 U.S.C. Section 27.

"7. Accordingly, if the preliminary injunction entered herein is vacated, and if the Whitney National Bank in Jefferson Parish so requests . . . it is my present intention to issue such certificate."

14

Moreover, the intervening defendant herein, while admitting that it is a subsidiary of a bank holding company within the definitions contained in both the aforementioned Federal Bank Holding Company Act and Louisiana Act No. 275 of 1962, alleges in this action in its proposed Supplemental Answer:

"V. Intervening Defendant avers that Act 275 furnishes no basis for granting the plaintiffs' request for declaratory relief or for an injunction . . . because Act 275 does not apply to the Comptroller of the Currency or to a national bank such as Whitney National Bank in Jefferson Parish.

"VI. Intervening Defendant further avers that Act 275, if applicable, violates the Statutes and Constitution of the United States.

"Wherefore . . . Intervening Defendant prays that this Court enter a judgment declaring that Louisiana Act 275 of 1962 does not apply to either the Defendant Comptroller or the Intervening Defendant. In the alternative, Intervening Defendant further prays for a judgment declaring that the said Act 275 is unconstitutional and void."

15

Intervening Plaintiff, charged as aforesaid with the administration of the banking laws of Louisiana, including Act 275 of 1962, and with the supervision and control of banks, bank holding companies and their subsidiaries in Louisiana, and with the protection of all banks doing business in Louisiana under the laws of Louisiana against unlawful and improper bank establishments and operations, respectfully asserts and alleges:

(a) Defendant Comptroller is without authority to issue any certificate to intervening defendant herein, authorizing it to open and operate banking offices in Louisiana in violation of Federal and State statutory prohibitions;

(b) Intervening defendant herein, like all banks and bank holding company subsidiaries proposing to do business in Louisiana, is subject to the prohibitions of 12 U.S.C. 36(c), Louisiana Revised Statutes 6:54, 12 U.S.C. 1841, et seq., and Louisiana Act 275 of 1962, and is accordingly prohibited from opening and operating banking offices in Jefferson Parish, Louisiana.

(c) Louisiana Act 275 of 1962 is a Constitutional statute, which together with 12 U.S.C. 1845, 1846 specifically prohibits intervening defendant, admittedly a subsidiary of a corporation organized under the laws of Louisiana which is subject to regulation by the State of Louisiana, from opening banking facilities in Jefferson Parish so long as more than Seventy-five (75%) percent of intervening defendant's outstanding stock is owned by a bank holding corporation.

16

Intervening plaintiff respectfully alleges further that the issuance by defendant of any certificate authorizing Whitney National Bank of New Orleans, through the device of the Whitney Holding Corporation, unlawfully to establish banking offices in Jefferson Parish, Louisiana, with funds taken directly from the Whitney National Bank of New Orleans, would cause chaos in the entire banking industry throughout the State of Louisiana, and would, contrary to the public policy of Louisiana expressed in Act 275 of 1962 and underlying L.R.S. 6:54, eliminate all effective protections historically fostered by the laws of the United States and the State of Louisiana for the growth of independent unit banks and to insure effective competition among all banking institutions. Moreover, the granting of a certificate to intervening defendant herein pursuant to any finding that 12 U.S.C. 1841, et seq. and Louisiana Act 275 of 1962, read together, do not exclude Louisiana bank holding corporations from opening bank facilities throughout Louisiana so long as the facilities are simply chartered as National banks, would place in the hands of intervening defendant and its present holding corporation concentration of control over the banking industry of Louisiana,

prohibited to all State banks, and would create means for eliminating independent unit banks and the probable monopoly control of banking in Louisiana by Whitney National Bank.

17

More specifically, with reference to Jefferson Parish, Louisiana, the granting of a certificate to intervening defendant herein would bring to bear upon all of the State banks located therein a new, destructive, unlawful competition from the combined capital resources, lending power and management of the Whitney National Bank of New Orleans, and would place in jeopardy the capital investments in said banks.

By law, the State chartered banks located in Jefferson Parish are prohibited from opening and operating branch banks in Orleans Parish, Louisiana, in competition with Whitney National Bank of New Orleans, and each is prohibited by law from creating, establishing and operating with its own capital resources a holding company system controlling bank offices in Orleans Parish or elsewhere in the State of Louisiana. Each of these banks has been established and has been operating in Jefferson Parish, Louisiana in reliance upon Federal and State statutes which prohibit other National and State banks from interfering with, damaging or impeding their banking businesses and facilities by means of unlawful expansion and encroachments.

18

The State chartered banks located in Orleans Parish, Louisiana are relatively small competitors of the Whitney National Bank of New Orleans. Many of the depositors and borrowers of each of these banks either reside in or have offices located in Jefferson Parish, Louisiana, but nevertheless maintain substantial deposits or loan accounts at the banking offices of such banks. Each of these banks is prohibited by law from expanding into Jefferson Parish by means of the establishment of branch facilities or by the device of creating a holding company through which it may simply siphon its capital funds into banking offices in Jefferson Parish or in other locates in Louisiana. If the intervening defendant were licensed to open its facilities in Jefferson Parish, Louisiana, in contravention of these same

statutory prohibitions, said defendant and Whitney National Bank of New Orleans would immediately be able to attempt to divest and appropriate to themselves substantial portions of the banking business and profits now enjoyed by the said Orleans Parish State banks from sources in Jefferson Parish, and would cause these State banks to suffer severe, irreparable damage and loss far exceeding the jurisdictional monetary limits of this Court.

19

Finally, if defendant Comptroller is permitted by this Court to ignore and avoid the prohibitions of the aforementioned Federal and State statutes, as he proposes to do in this action, there would remain no effective bar to the farther expansion of Whitney Holding Corporation through each and every Parish in the State of Louisiana, provided, in each Parish, the holding corporation expanded simply by means of the establishment of National rather than State bank facilities.

Upon information and belief, Whitney Holding Corporation was the only bank holding corporation organized and proposed to commence banking operations in the State of Louisiana on July 10, 1962, when Act No. 275 of 1962 became effective, and since said Act now prohibits "any action to be taken which results in a company or a bank becoming a bank holding company", this would place Whitney Holding Corporation and the Whitney National Bank in an absolute monopoly position in the banking industry of Louisiana, free to expand in any and every direction it chooses, while *all other State and National banks* are prohibited by law from creating Louisiana bank holding companies for any like expansion.

The granting of such power and control to the Whitney organization would necessarily subject all other banks in Louisiana to new, oppressive and unfair competition from the combined capital resources of an ever expanding bank holding company system supported and fostered by the defendant Comptroller, which even at the outset of its expansion program is the dominant banking institution in the entire State of Louisiana.

Any holding by this Court in this action that Louisiana Act No. 275 of 1962 is unconstitutional, or that said Act may not properly and effectively be applied to prevent and prohibit intervening defendant herein, a wholly owned subsidiary of a Louisiana corporation, Whitney Holding Corporation, from opening branch offices would deprive or hamper intervening plaintiff in fulfilling his official obligation to enforce equally and justly the prohibitions of this statute, and would render it impossible for the banking laws of Louisiana to be administered and applied justly, constitutionally and in accordance with the expressed public policy of the State of Louisiana and the Congress of the United States.

WHEREFORE, intervening plaintiff prays:

(a) That this Court enter judgment herein declaring that defendant, Comptroller of the Currency, is prohibited by 12 U.S.C. 36, 12 U.S.C. 1841, et seq., Louisiana Revised Statutes 6:54, and Act No. 275 of the 1962 Regular Session of the Louisiana Legislature from issuing to the Whitney National Bank of New Orleans, the Whitney Holding Corporation and/or the Whitney National Bank in Jefferson Parish a Certificate or Certificates of Authority authorizing them, or any of them, to establish, open and operate new branch bank facilities or additional banking offices or any other bank facilities in Jefferson Parish, State of Louisiana; and

(b) That this Court make permanent the preliminary injunction entered herein by this Court on July 10, 1962; and

(c) That this Court grant such other and further relief as may seem just and proper in the premises.

s/ BENTLEY G. BYRNES,
*Attorney for J. W. Jeansonne,
State Bank Commissioner of the
State of Louisiana, and
Assistant Attorney General
of Louisiana.*

s/ EDWARD L. MERRIGAN,
Local Counsel of Record.

Filed September 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

Civil Action No. 1857-62

PLAINTIFFS' OPPOSITION TO INTERVENING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND MOTION FOR LEAVE TO AMEND AND TO DEFENDANT'S MOTION TO DISMISS

Come now the plaintiffs, who oppose, on all of the grounds set forth in the papers and points and authorities in support of the Motion for Preliminary Injunction herein and in support of Plaintiffs' Cross-Motion for Summary Judgment,

- (a) Defendant's Motion to Dismiss,
- (b) Intervening defendant's Cross-Motion for Summary Judgment, and Motion for Leave to Amend its Answer herein.

Plaintiffs shall, in accordance with local Rule 9(h), serve and file a "Statement of Genuine Issues Which Must Be Litigated" with reference to said defendants' motions for summary judgment, and will file additional Points and Authorities in Opposition to the said Motion to Dismiss and Cross-Motion for Summary Judgment as soon as the typing of same after the Labor Day holidays can be completed.

With reference to intervening defendant's motion for leave to serve and file an Amended Answer, plaintiffs will consent to such motion if defendant and intervening defendant, pursuant to Rule 15(b) of the Federal Rules of Civil Procedure, will consent (a) to an amendment of the complaint herein whereby Paragraphs 13, 20 and the Prayer for Relief thereof would be read to include Louisiana Act 275 of 1962, as one of the statutes alleged to be violated, along with the federal Bank Holding Company Act, or (b) that the issue of the alleged violation of Louisiana Act 275 of 1962 be treated "in all respects as . . . raised in the pleadings" herein.

EDWARD L. MERRIGAN,
Attorney for Plaintiffs.

Filed September 6, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

Civil Action No. 1857-62

PLAINTIFFS' "STATEMENT OF GENUINE ISSUES" IN OPPOSITION
TO DEFENDANT'S AND INTERVENING DEFENDANT'S CROSS MOTION
FOR SUMMARY JUDGMENT

In accordance with the provisions of *Rule 9(h)* of this Court's Rules, plaintiffs file the following "Statement of Genuine Issues" in opposition to the cross-motion of intervening defendant, Whitney National Bank in Jefferson Parish, for summary judgment, in which motion defendant Comptroller has concurred:

1. Plaintiffs deny that Whitney Holding Corporation is presently "duly registered under the Bank Holding Company Act of 1956, 12 U.S.C. §1841-48" as alleged in Paragraph 1 of intervening defendant's proposed statement of admitted facts. The status of Whitney Holding Corporation under said Act is the subject of incomplete litigation in the Fifth Circuit Court of Appeals under 12 U.S.C. §1848.

2. Plaintiffs deny that the withdrawal of \$650,000. from the capital funds of Whitney National Bank of New Orleans for immediate transfer by Whitney Holding Corporation to Whitney National Bank in Jefferson Parish was or was intended, in form or in substance, to be a mere ordinary "dividend" to the newly created Whitney Holding Corporation, as alleged in Paragraphs "2" and "11" of the Statement of Intervening Defendant of Material Facts as to Which There Is No Genuine Issue. On the contrary, the evidence of record herein, contained wholly in defendant's own written exhibits, shows:

(i) In a letter to his shareholders, dated October 27, 1961, the President of Whitney National Bank of New Orleans, wrote to his shareholders as follows:

"We propose to put \$350,000. of the capital funds of the Whitney National Bank into a Louisiana busi-

ness corporation under the title—"Whitney Holding Corporation" . . .

"The Crescent City National Bank (to be named Whitney National Bank of New Orleans) will provide \$650,000. to Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish. . . .

(ii) In Exhibit K to its application to the Federal Reserve Board, signed by Whitney Holding Corporation, the following admission appears:

"Financial Condition of Applicant—Applicant will own all of the outstanding shares of the Whitney National Bank of New Orleans and the proposed Jefferson Parish Bank, and contemplates no other financing. Any additional cash needed will be obtained from the undivided profits of the operating banks."

(iii) In his testimony before the Federal Reserve Board on January 17, 1962, Mr. Keehn Berry, President, Whitney National Bank of New Orleans, testified as follows (*Defendant's Ex. 4, page 13*):

"The Whitney National Bank of New Orleans will continue in exactly the same form as it is now *except for the withdrawal of \$650,000. in capital funds which will be put into the Jefferson Parish unit as capital for it.*"

(iv) In testimony before the Federal Reserve Board on January 17, 1962, Clem H. Schrt, attorney for minority stockholders in the Whitney National Bank of New Orleans, stated (*Defendant's Ex. 4, pages 42, 46*):

"It (Whitney Holding) exists how? It exists by virtue of the funds supplied to it by Whitney National. . . .

"But if it is all accomplished, they dip in and create a Jefferson Parish bank . . . for operation with Whitney funds."

Thus, as alleged in support of plaintiffs' motion for summary judgment, and as proved by defendant's own testimony and exhibits, the aforementioned \$350,000. and \$650,000. withdrawals from the capital funds of Whitney National

Bank of New Orleans were, in fact, and were intended to be nothing but the siphoning off of capital from Whitney National Bank of New Orleans for immediate transfer to the capital of the new branch of that bank, the intervening defendant herein.

3. There is no evidence of record and plaintiffs accordingly deny that Whitney National Bank in Jefferson Parish became a "national banking association on May 11, 1962", as alleged in Paragraph 9 of intervening defendant's statement of allegedly conceded material facts. Plaintiffs likewise deny the facts and conclusions drawn by defendant in said Paragraph 9 from two letters not in evidence herein.

4. Plaintiffs deny the statement contained in Paragraph 10 of intervening defendant's proposed statement of non-controverted facts that "there were no dissenting shareholders". The evidence of record herein is to the contrary, as follows:

In his testimony before the Federal Reserve Board on January 17, 1962, Mr. Keehn Berry, President of Whitney National Bank of New Orleans, testified (*Defendant's Ex. 4, pages 10, 11*):

"On the recommendation of the Comptroller, we proceeded with our stockholders' meeting submitting to stockholders our entire program and the reason for it.

"On November 29th, last year, our stockholders met. We had 105,824 shares out of 112,000 outstanding represented at the meeting; 93,645 shares voted in favor of the program and 12,145 shares voted against it."

Representatives of *dissenting shareholders* of Whitney National Bank of New Orleans appeared before the Federal Reserve Board in January, 1962 to oppose the proposals (*Defendant's Ex. 4, pages 25-47*):

Furthermore, the aforesaid statement in Paragraph 10 of the proposed statement of conceded facts is made in the face of the affidavit of E. A. Waffenschmidt, Cashier and Assistant Vice President of Whitney National Bank of New Orleans, filed herein by intervening defendant under date of August 3, 1962. Attached to that affidavit is a sheet entitled "Tabulation of Vote", certified by Judges of Election. This Tabulation, on file in this action shows, that 5,002 shares of stock were voted in *person against* the proposed plan here in litigation, while 7,143 shares voted against same

by proxy. A copy of said Tabulation Sheet is annexed hereto for the Court's convenience.

5. Plaintiffs deny, *by reason of complete lack of any admissible evidence herein*, that on May 18, 1962, "the shareholders of the old Whitney National Bank of New Orleans exchanged their shares of stock for stock of Whitney Holding Corporation"; and that on May 18, 1962, "the former shareholders of the old Whitney National Bank of New Orleans owned all of the stock of Whitney Holding Corporation which in turn owned all of the stock . . . of the new Whitney National Bank of New Orleans . . . and of the newly organized Whitney National Bank in Jefferson Parish", all as alleged in *Paragraph 10* of intervening defendant's proposed statement of material facts alleged not to be in issue.

The mere hearsay affidavit of James J. Saxon, dated June 20, 1962, relied upon by intervening defendant in support of these allegations, is *not* admissible proof of these allegations.

6. Plaintiffs deny, *for lack of any admissible evidence herein*, that "the first meeting of the stockholders of Whitney National Bank in Jefferson Parish was held on May 24, 1962"; that, on said date, "directors of the said bank were properly elected"; that, on said date, the directors "paid the price for their qualifying shares", were "sworn, qualified and (took) office as directors". For the same reason, plaintiffs deny that, on May 24, 1962, "by-laws were adopted", "officers of the bank have been elected, and stock of the Federal Reserve Bank of Atlanta in the amount of \$18,000. has been subscribed and paid for by Whitney National Bank in Jefferson Parish", all as alleged in *Paragraph 12* of intervening defendant's proposed statement of material facts.

The mere hearsay affidavit of James J. Saxon, dated June 20, 1962, relied upon by intervening defendant in support of these allegations, is *not* admissible proof thereof.

Furthermore, an exhibit filed upon this motion by intervening defendant herein completely contradicts the allegations of said *Paragraph 12* of intervening defendant's statement, in that it purports to show, *under oath*, that the first meeting of the shareholders of intervening defendant occurred on May 10, 1962 and that directors were elected at that time (See *Exhibit 4*, annexed to Gilly affidavit of August 3, 1962, copy of which is also annexed hereto).

In addition, in *Paragraphs 10 and 11* of intervening defendant's proposed statement of conceded facts, it is alleged, contrary to said *Exhibit 4*, that Whitney Holding Corporation did not become the owner of "all the stock... of the newly organized Whitney National Bank in Jefferson Parish" until on or after *May 18, 1962*. Furthermore, in *Paragraph 12* of said proposed "material facts", it is alleged that the directors of intervening defendant did not pay "the purchase price for their qualifying shares" until on or after *May 24, 1962*.

For all of these reasons, it is submitted that intervening defendant's Rule 9(h) Statement refers not only to facts "in issue" herein, but to facts which are incorrect and untrue under said defendant's own sworn written exhibits herein.

7. Plaintiffs deny that "the present suit was filed on June 9, 1962, just as the Comptroller of the Currency was about to issue a Certificate of Authority... permitting the Whitney National Bank in Jefferson Parish to commence banking operations", as alleged in *Paragraph 13* of intervening defendant's statement of alleged conceded material facts. On the contrary, on June 8, 1962 (and as partially conceded by defendants in *Paragraph 14* of intervening defendant's statement of alleged conceded facts), Robert Bloom, Esq., Counsel for defendant Comptroller, advised plaintiffs' counsel that since the Comptroller was not then present in Washington and since his office was not yet ready to issue the certificate herein, in any event, the Comptroller would accordingly voluntarily agree to withhold issuance of his certificate until this Court determined plaintiffs' motion for a preliminary injunction.

8. Plaintiffs deny *Paragraph 17* of intervening defendant's proposed statement of conceded material facts, and state that the allegations contained therein are patently untrue and groundless, particularly that portion thereof which states "Had it not been for the institution of these proceedings on June 9, 1962... the Whitney National Bank in Jefferson Parish (would have commenced) banking operations on or about that date and such banking operations would in fact have been commenced at that time".

Annexed hereto, for the convenience of the Court, is an affidavit made on July 3, 1962 in New Orleans, Louisiana by

Leon M. Trice, a commercial photographer in that city for 40 years, together with photographs taken by him on *July 3, 1962, almost one month after June 9, 1962*, showing

(a) the proposed location at 4407 Jefferson Highway of the intervening defendant's alleged temporary office. On that date, it was a self service "Washateria"; and

(b) the proposed location, across the highway, where the intervening defendant allegedly intends to construct a permanent office. It was, on July 3, 1962, still represented as the "Royal Tourist Court". A "For Sale" sign clearly appears on the property in front.

Moreover, by affidavit dated June 16, 1962 on file herein, James J. Gilly, President of intervening defendant herein, swore that the lease on the premises at No. 4407 Jefferson Highway was not even scheduled to become effective until *June 15, 1962, i.e., after June 9, 1962*, the date upon which this action was commenced. A copy of said lease submitted to the Court by intervening defendant is likewise annexed hereto *in support of plaintiffs' objections* to said defendant's alleged "material facts as to which there are no issue".

9. Plaintiffs deny the allegations contained in *Paragraph 18* of intervening defendant's proposed conceded facts for the same reasons, and on the basis of the same evidence hereto annexed.

10. Plaintiffs deny the allegations contained in *Paragraph 7* of intervening defendant's statement to the extent that same imply plaintiffs' agreement that the Federal Reserve Board scheduled and held in Louisiana the normal or regular statutory public hearing provided for in *12 U.S.C. §1842*, and to the extent same imply that plaintiffs had actual notice of the informal hearing conducted by said Board in Washington, D. C. in January, 1962. Furthermore, plaintiffs did apply to said Board for further hearings and reconsideration of the application of Whitney Holding Corporation, but said application was denied without hearing.

WHEREFORE, plaintiffs submit that substantial genuine issues exist with reference to the material facts relied upon by defendant and intervening defendant in support of their

respective motion and cross-motion for summary judgment herein, and that same must accordingly be denied. Simultaneously, however, there are herein facts as to which no genuine issues exist which direct that plaintiffs' motion for summary judgment be granted, and plaintiffs pray once again that such judgment be granted and entered herein.

EDWARD L. MERRIGAN,
Attorney for Plaintiffs.

Filed September 6, 1962

EXHIBIT "O"

PLAINTIFFS' EXHIBITS

PLYMOUTH CORDAGE COMPANY
Established 1824
Southern District Office: 600 St. George Avenue,
P.O. Box 10215,
New Orleans 21, Louisiana

12 July 1961.

Whitney National Bank,
Main Office,
New Orleans, Louisiana.

Attention: Mr. Morgan Whitney
Gentlemen:

I understand that you are contemplating the establishment of a branch bank to be located in the vicinity of Jefferson Highway.

At present we are carrying our pay roll account with your branch at Carrollton and Oak. Our subsidiary company, Cordage Sales Company, Inc. has its regular account with your main branch downtown.

My personal account is with your main branch, although I did open a small account with National Bank of Commerce in Jefferson Parish, when they opened on Jefferson Highway. This was purely for the convenience of location to my office.

While I cannot speak for our management at Plymouth,

I can definitely state that a branch of your institution located on Jefferson Highway would mean a great deal to us all in the convenience of handling our accounts.

I shall continue in my efforts to increase our activity with the Whitney, and your contemplated new office should certainly strengthen your sales effort with our management to secure a greater portion of our New Orleans business.

Sincerely yours,

PLYMOUTH CORDAGE COMPANY,
C. H. BABINGTON,
Southern District Manager.

CHB/mo

Filed September 6, 1962

EXHIBIT "P"

CHARLES DENNERY, INC.
Established 1894
P. O. Box 10094
New Orleans 21, Louisiana

July 12, 1961.

Whitney National Bank of New Orleans,
Mr. K. Berry, President,
New Orleans, Louisiana

Dear Sir:

It would be a distinct advantage to us to have a banking institution established in the Parish of Jefferson, with banking facilities and service such as the Whitney National Bank of New Orleans renders.

Sincerely,

CHARLES DENNERY, INC.
GEORGE LE BEAU,
Treasurer.

GL:jd

Filed September 6, 1962

EXHIBIT "Q"

O. E. ALEXANDER, JR.
3600 James Drive
Metairie, Louisiana

July 12, 1961.

Dear Mr. Carpenter:

I was indeed pleased to hear of the Whitney National Bank's plans for expansion, which possibly might include a Branch located somewhere on Jefferson Highway.

Of course, this would make it very convenient for me and certainly I feel it would be convenient for people residing in this area, either on a personal or business basis, to be able to do their banking in a facility that is located much closer to the area instead of having to do their banking on the basis of going downtown each time.

I would certainly like to see such an expansion program take place on the part of Whitney National Bank.

Yours very truly,

O. E. ALEXANDER, JR.

MR. WM. A. CARPENTER,
Vice President
Whitney National Bank of New Orleans,
New Orleans, Louisiana.

Filed September 6, 1962

EXHIBIT "R"

RAUSCH NAVAL STORES Co.,
Incorporated
Manufacturers Dealers and Exporters
Turpentine, Rosin, Pine Tar, Navy Pitch
New Orleans, U.S.A.

July 12, 1961.

Whitney National Bank of New Orleans
St. Charles & Gravier Streets,
New Orleans, Louisiana.

Attention: Mr. J. W. Berry, *President*

Gentlemen:

We have for many years enjoyed and taken pride in our banking association with the Whitney National Bank of New Orleans.

Formerly our offices were located in the business section of New Orleans; however, it was elected that for the purpose of achievement and advancement of the corporation, it was necessary for us to combine the office with warehouse operations. Such move was accomplished, which has resulted in our steady and continued growth.

It was very difficult to obtain sufficient property in Orleans Parish to care for our expansion program which resulted in our location in Jefferson Parish some twelve years ago.

You are quite cognizant that some 85% of our business sales are for foreign consumption. Because of the nature of our business it is most necessary we are in close contact with the Whitney National Bank for discussion of finance, credit letters, conditions in countries where we sell our materials, as well as customers involved—all of which consumes much time and effort in our organization and certainly, we know consumes your valuable time.

It is a well known fact that many other firms have located in the East bank area of Jefferson Parish, which has assisted greatly in its phenomenal growth. With this in mind,

we place before you for your consideration the possibility of your establishing a branch bank in this area, which we feel would be a distinct advantage and convenience to the many firms that depend on the banking facilities of the Whitney.

Yours very truly,

RAUSCH NAVAL STORES Co. INC.
WILLIAM W. RAUSCH,
Vice President.

WWR/cr

Filed September 6, 1962

EXHIBIT "T"

BOYCE MACHINERY CORPORATION
7330 Florida Street,
P. O. Box 1308,
Baton Rouge, Louisiana,
Wa 1-8131

12 July 1961.

Mr. James Gilly, Jr.,
Whitney National Bank,
New Orleans, Louisiana.

Dear Mr. Gilly:

I understand your bank is considering the formation of a new bank to be located in Jefferson Parish. This certainly is good news for us. As you know, our office in the New Orleans area is located in Jefferson Parish and, since the major portion of our banking is done with your firm, this new facility would certainly make it much more convenient for us to continue our relationship with you.

Needless to say, should your bank move into Jefferson Parish, a great number of our employees in that area would take advantage of your services.

Again, let us congratulate you upon hearing this news.

Yours very truly,

STATEN H. WILSFORD,
Vice-President.

SHW/jt

Filed September 6, 1962

EXHIBIT "U"

CRESCENT MATERIALS SERVICE, INCORPORATED
4829 Jefferson Highway,
Post Office Box 10097,
New Orleans 21, Louisiana

July 11, 1961.

Whitney National Bank of N. O.
228 St. Charles Avenue,
New Orleans 12, La.

Att.: Mr. J. P. Monroe, *Vice-President*

Gentlemen:

This company is a wholesale building material supply company doing business in the Parish of Jefferson, State of Louisiana. The nature of our business requires that we have daily banking transactions, frequently requiring several trips in a day.

The purpose of this letter is to request that the Whitney Bank consider the establishment of a banking facility in Jefferson Parish. The establishment of a Branch in this area would certainly be of great assistance to long time accounts such as ourselves and we believe would benefit the Bank.

Your consideration of this matter will be greatly appreciated.

Yours very truly,

CRESCENT MATERIALS SERVICE, INC.
C. O. LYLE, JR.,
President.

COL/m

Filed September 6, 1962

EXHIBIT "V-1"

Form F.R. Y-1

EXHIBIT F

Statutory Factors

1. *History:*

Applicant is a proposed new corporation created for the sole purpose of holding all of the stock (except directors' qualifying shares) of the present Whitney National Bank of New Orleans. The plans by which that ownership is brought about are described in Exhibit D(3) hereof. The Whitney National Bank of New Orleans as owned by the Whitney Holding Corporation will have the 43 million of capital, surplus and undivided profits as appears in the present Whitney National Bank statement. Its financial history appears in Exhibit M, having been established in 1883 and having served the New Orleans community faithfully and continuously since that date. The directors and officers of the Crescent City National Bank (to be named immediately Whitney National Bank of New Orleans) will be the same as those now serving the present Whitney National Bank.

2. *Prospects:*

The prospects of the present Whitney National Bank of New Orleans are reflected in the earnings figures given in Exhibit M-3 hereof. It will continue to serve the Parish of Orleans, which coincides with the City of New Orleans, as it has in the past with no presently contemplated change in its facilities.

The proposed new Whitney National Bank in Jefferson Parish which Applicant asks permission of the Federal Reserve Board to create and acquire will be provided with initial capital, surplus and undivided profits of \$650,000.00. As explained elsewhere this cash will be derived from Whitney National Bank of New Orleans.

Filed September 6, 1962

EXHIBIT "V-2"

Form F.R. Y-1

EXHIBIT K

Financial Condition of Applicant

Applicant will own all of the outstanding shares of the Whitney National Bank of New Orleans and the proposed Jefferson Parish Bank, and contemplates no other financing. Any additional cash needed will be obtained from the undivided profits of the operating banks.

Attached is a pro forma balance sheet of the applicant as of the completion of the program permission for which is hereby requested, but based on figures of June 30, 1961. (Exhibit K-1)

EXHIBIT L

Financial History of Applicant

None—See Exhibit M

EXHIBIT M

Financial Condition and History of the Subsidiary Banks

Information with respect to the financial condition and history of each of the Subsidiary Banks, as follows:

1. Crescent City National Bank (to be immediately named Whitney National Bank of New Orleans) and Whitney National Bank in Jefferson Parish have no financial history. We are therefore attaching information concerning the present Whitney National Bank of New Orleans as follows:
 - (a) The published reports of conditions of the Whitney National Bank of New Orleans for the past 5 years marked Exhibits M-2-A, M-2-B, M-2-C, M-2-D and M-2-E.
 - (b) A summary analysis of surplus and undivided profits, and of each reserve account included as a part of capital structure in reports of conditions for the past 5 years, marked Exhibit M-3.

- (c) A summary analysis of each general or unallocated valuation reserve account applicable to the loan account or the securities account for the past 5 years, marked Exhibit M4.

Filed September 6, 1962

EXHIBIT "V-3"

Statement of Whitney Holding Corporation

(Pro Forma)

Assets	
Investments	
112,000 shares Capital Stock (\$25 Par Value)	
Whitney National Bank of New Orleans.....	\$42,380,000.00
20,000 shares Capital Stock (\$25 Par Value)	
Whitney National Bank in Jefferson Parish.....	650,000.00
	<u>\$43,030,000.00</u>
Liabilities	
Liabilities.....	None
Capital	
1,120,000 shares (no par value) Common Stock.....	\$43,030,000.00
	<u>\$43,030,000.00</u>

Filed September 6, 1962

EXHIBIT "V-4"

WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

Condensed Statement of Condition as of December 30, 1960

Resources	
Cash and Due from Banks.....	\$112,953,707.18
U. S. Government Obligations.....	135,142,754.47
State, Municipal and Other Public Bonds.....	7,221,853.55
Other Bonds and Securities.....	956,832.20
Loans and Discounts.....	206,385,793.69
Bank Premises.....	7,638,074.58
Other Real Estate.....	116,451.53
Customers' Liability Account of Acceptances.....	544,007.04
Accrued Income and Other Assets.....	2,082,898.49
Total.....	\$473,042,372.73
Liabilities	
Deposits.....	\$425,416,754.30
Acceptances.....	562,058.54
Dividend Payable January 3, 1961.....	112,000.00
Reserve for Taxes, Accrued Interest and Expenses.....	5,101,871.58
Other Liabilities.....	105,635.87
Capital Stock.....	\$ 2,800,000.00
Surplus.....	27,200,000.00
Undivided Profits.....	11,744,052.44
	<u>41,744,052.44</u>
Total.....	\$473,042,372.73

Member of The Federal Deposit Insurance Corporation.

Filed September 6, 1962

EXHIBIT "V-5"

WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

Condensed Statement of Condition, December 31, 1959

Resources		
Cash and Due from Banks.....		\$114,377,942.65
U. S. Government Obligations.....		112,458,847.04
State, Municipal and Other Public Bonds.....		10,253,172.02
Other Bonds and Securities.....		956,974.71
Loans and Discounts.....		213,264,134.38
Bank Premises.....		6,334,829.55
Other Real Estate.....		39.00
Customers' Liability Account of Acceptances.....		840,645.97
Accrued Income and Other Assets.....		2,177,946.43
Total.....		<u>\$460,664,531.75</u>
Liabilities		
Deposits.....		\$418,309,507.79
Acceptances.....		996,932.83
Dividend Payable January 2, 1960.....		112,000.00
Reserve for Taxes, Accrued Interest and Expenses.....		2,410,014.74
Other Liabilities.....		101,422.17
Capital Stock.....	\$ 2,800,000.00	
Surplus.....	27,200,000.00	
Undivided Profits.....	<u>8,734,654.22</u>	
Total.....		<u>38,734,654.22</u>
		<u>\$460,664,531.75</u>

Depository of the United States Government, State of Louisiana and City of New Orleans. Member of the Federal Deposit Insurance Corporation.

Filed September 6, 1962

EXHIBIT "V-6"

WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

Condensed Statement of Condition, December 31, 1958

Resources	
Cash and Due from Banks.....	\$107,759,789.32
U. S. Government Obligations.....	148,776,471.16
State, Municipal and Other Public Bonds.....	12,557,259.86
Other Bonds and Securities.....	956,962.12
Loans and Discounts.....	190,338,206.50
Bank Premises.....	4,428,834.98
Other Real Estate.....	39.00
Customers' Liability Account of Acceptances.....	1,074,881.46
Accrued Income and Other Assets.....	2,470,716.61
Total.....	\$468,363,161.01
Liabilities	
Deposits.....	\$427,327,009.39
Acceptances.....	1,111,956.96
Dividend Payable January 2, 1959.....	112,000.00
Reserve for Taxes, Accrued Interest and Expenses.....	3,750,096.05
Other Liabilities.....	93,998.87
Capital Stock.....	\$ 2,800,000.00
Surplus.....	27,200,000.00
Undivided Profits.....	5,968,099.74
Total.....	35,968,099.74
Total.....	\$468,363,161.01

Depository of the United States Government, State of Louisiana and City of New Orleans. Member of the Federal Deposit Insurance Corporation.

Filed September 6, 1962

EXHIBIT "V-7"

WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

Condensed Statement of Condition, December 31, 1957

Resources	
Cash and Due from Banks.....	\$111,281,163.06
U. S. Government Obligations.....	110,181,533.56
State, Municipal and Other Public Bonds.....	21,192,310.24
Other Bonds and Securities.....	839,461.97
Loans and Discounts.....	201,865,728.87
Bank Premises.....	4,022,982.10
Other Real Estate.....	40.00
Customers' Liability Account of Acceptances.....	1,056,415.01
Accrued Income and Other Assets.....	1,889,097.30
Total.....	\$452,328,732.11
Liabilities	
Deposits.....	\$413,075,521.96
Acceptances.....	1,232,127.14
Dividend Payable January 2, 1958.....	112,000.00
Reserve for Taxes, Accrued Interest and Expenses.....	4,177,866.70
Other Liabilities.....	90,001.19
Capital Stock.....	\$ 2,800,000.00
Surplus.....	22,200,000.00
Undivided Profits.....	8,641,215.12
Total.....	\$452,328,732.11

Depository of the United States Government, State of Louisiana and City of New Orleans. Member of the Federal Deposit Insurance Corporation.

Filed September 6, 1962

EXHIBIT "V-8"

WHITNEY NATIONAL BANK OF NEW ORLEANS

Established 1883

Condensed Statement of Condition, December 31, 1956

Resources	
Cash and Due from Banks.....	\$116,856,122.41
U. S. Government Obligations.....	128,625,082.70
State, Municipal and Other Public Bonds.....	22,160,659.38
Other Bonds and Securities.....	839,416.65
Loans and Discounts.....	195,241,760.64
Bank Premises.....	3,870,212.15
Other Real Estate.....	128,571.71
Customers' Liability Account of Acceptances.....	1,324,989.27
Accrued Income and Other Assets.....	1,604,526.60
Total.....	\$470,651,341.51
Liabilities	
Deposits.....	\$434,498,871.03
Acceptances.....	1,572,644.55
Dividend Payable January 2, 1957.....	112,000.00
Reserve for Taxes, Accrued Interest and Expenses.....	3,145,114.82
Other Liabilities.....	81,266.52
Capital Stock.....	\$ 2,800,000.00
Surplus.....	22,200,000.00
Undivided Profits.....	6,241,444.59
Total.....	\$470,651,341.51

Depository of the United States Government, State of Louisiana and City of New Orleans. Member of the Federal Deposit Insurance Corporation.

Filed September 6, 1962

EXHIBIT "W"

WHITNEY NATIONAL BANK
of New Orleans 10

June 28, 1961.

Keehn W. Berry
President

The Honorable Ray M. Gidney,
Comptroller of the Currency,
3122 Treasury Building,
Washington 25, D. C.

Dear Mr. Gidney:

We are now attaching the following:

1. An application to organize the Crescent City National Bank.
2. An application to organize Whitney National Bank in Jefferson Parish.
3. An application for approval to consolidate the Crescent City National Bank with the present Whitney National Bank of New Orleans.

These applications form part of an overall plan for the operation in the Parish of Orleans and in the Parish of Jefferson of the Whitney organization in holding company form.

As we have explained to you, we plan to form the Whitney Holding Corporation and to distribute the stock of this corporation to our shareholders as a dividend, in the proportion of 1/20 of 1 share of the corporation for every outstanding share of Whitney National Bank. The Whitney corporation will then acquire all of the stock of the newly organized Crescent City National Bank, into which the present Whitney National Bank will be consolidated, in accordance with law, by the vote of $\frac{2}{3}$ of the stock holders, pursuant to an agreement under which the present Whitney stockholders will surrender their stock and receive 9 and 19/20 shares of Whitney corporation stock for each share of Whitney Bank stock presently outstanding.

The Whitney corporation will at the same time acquire all of the stock of the newly formed Whitney National Bank in Jefferson Parish.

The details of this program are set out in full in the applications attached and in the exhibits attached thereto.

In accordance with our understanding with you, we are filing an application promptly with the Federal Reserve Board for approval of the Whitney Holding Corporation to become a bank holding company in accordance with law. We understand that approval of the applications attached hereto will be subject to approval of the application with the Federal Reserve Board referred to.

If any further information is desired, please let us know.

Sincerely yours,

K. W. BERRY
President.

KWB-F.

Filed September 6, 1962

EXHIBIT "X-1"

WHITNEY NATIONAL BANK
of New Orleans 10

June 28, 1961.

Keehn W. Berry
President

The Honorable Ray M. Gidney,
Comptroller of the Currency,
3122 Treasury Building,
Washington 25, D. C.

Dear Mr. Gidney:

Under cover of this letter we are sending you an application to organize a National Bank in Jefferson Parish, Louisiana. As you are undoubtedly aware, industrial sites on the Mississippi River above the City of New Orleans are being developed at a very rapid rate. This area gives promise of becoming one of the nation's most productive manufacturing centers because of its inherent advantages in the form of abundant water, gas, oil, sulphur, and lime and

its favorable location in terms of water and land transportation.

Many of the companies which have undertaken activities on this stretch of the river upstream from us are already our customers, some of them for many years. Since 1947, two state banks and one national bank have been organized in the East Bank portion of Jefferson Parish and one national bank with its home office in Gretna on the West Bank of the Mississippi has located a branch on the East Bank. In effect, these new banks have interposed themselves between our offices in Orleans Parish and our up-river business in the adjoining Parish of Jefferson.

Our proposal, in view of this situation, is to obtain permission to organize a national bank under the name "Whitney National Bank of Jefferson Parish". We are prepared, initially to establish a main office and one branch in the areas of Jefferson Parish indicated on the map enclosed with our application. It is felt that a move of this sort should be marked with decision and for that reason we should like to start with two offices.

As the result of our extensive remodeling of our quarters in New Orleans we have surplus bank furniture and equipment which could be made available to the proposed bank. We envision utilizing rental property which could be attractively designed to meet immediate requirements. Then, as business patterns clarify, we would undertake more substantial arrangements.

Filed September 6, 1962

EXHIBIT "X-2"

WHITNEY NATIONAL BANK
of New Orleans 10, La.

June 28, 1961.

The Honorable Ray M. Gidney,
Comptroller of the Currency,
3122 Treasury Building,
Washington 25, D. C.

Page #2

In order to give you, as quickly as possible, the sort of supporting information we feel you may want in connection with this application, we are submitting certain data with

your Form 1953. We respectfully ask for your favorable consideration of this application and stand ready to furnish whatever assistance you may require.

Sincerely yours,

K. W. BERRY
President.

KWB-F.

Filed September 6, 1962

EXHIBIT "Y"

Application is hereby also made on behalf of such Resulting Bank to the Comptroller of the Currency, pursuant to Section 5155 of the United States Revised Statutes, for permission to establish branches at the following locations now occupied by the head office and branches, or to be occupied by approved branches of

Whitney National Bank of New Orleans:

Popular Name and Location of Proposed Branches	Date Established	Population of City, Town or Village
Following branches of present Whitney National Bank of New Orleans:		
Poydras Branch, established 1920		
City Bank Branch, established 1919		
Morgan State Branch, established 1911		
French Market Branch, established 1919		
St. Charles Avenue Branch—formerly Margaret Place Branch, established 1924		
Carrollton Branch, established 1908		
Broad Street Branch, established 1927		
Gentilly Branch, established 1958		
St. Roch Branch, established 1927		
Third District Branch, established 1913, and Algiers Branch, established 1930		

There are also attached, and made a part of this application, a copy of the agreement between the participating banks relating to the proposal which provides the basis of this application and supplementary documents, statements, schedules, and exhibits relative to the factors which the Comptroller of the Currency and other Federal agencies are required to consider under the provisions of applicable statutes.

Summarize the basic reasons and the negotiations which led to the filing of this application and explain fully the extent of common ownership or management of the

The Whitney National Bank of New Orleans is limited in its establishment of branches to the Parish of Orleans, the boundaries of which conform to those of the City of New Orleans. The city has grown and spread over the city boundaries into Jefferson Parish and to a lesser degree St. Bernard Parish. Old customers of Whitney National Bank have established new plants and places of business beyond the city limits and likewise individual accounts are influenced by the fact that the customer has moved beyond the city limits. Whitney National Bank therefore proposes to set up a holding company—subject to the approval of the proper authorities, and in order that there be no conflicts of interest between the city units and the Jefferson Parish units it proposes by this

consolidation to place 100% of Whitney National Bank of New Orleans stock and 100% of Whitney National Bank of Jefferson Parish into that holding company. Further details of plans of procedure appear on the following page

K. W. Berry, President, Whitney National Bank of New Orleans
(Name) (Title)

529-7272 (New Orleans)
(Telephone No.)

It is understood that the cost of any necessary examination or investigation in relation to this application will be borne by:

Whitney National Bank of New Orleans
(Name of Bank)

Applicants

The applicants hereby represent that the information contained in this application is true and complete to the best of their knowledge and belief.

Whitney National Bank of New Orleans By
(Name of Bank) (Authorized Officer)

Crescent City National Bank By
(Name of Bank) (Authorized Officer)

Filed September 7, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STIPULATION

It is hereby stipulated by and between the parties hereto that:

(1) The motion to dismiss filed herein on August 10, 1962, and the motion for summary judgment filed herein on July 11, 1962, by defendant James J. Saxon, Comptroller of the Currency, and the motion for summary judgment filed herein on August 13, 1962, by intervening defendant Whitney National Bank in Jefferson Parish, shall be treated in all respects as motions to dismiss and for summary judgment, respectively, against intervening plaintiff J. W. Jeansonne, Louisiana State Bank

Commissioner, as well as against the other plaintiffs in this action.

(2) Intervening plaintiff J. W. Jeansonne, Louisiana State Bank Commissioner, shall, if he so elects be deemed in all respects to have joined in the cross-motion for summary judgment filed herein by other plaintiffs on July 24, 1962, in all points and authorities filed in support of such motion, and in all points and authorities filed in opposition to pending motions filed by defendants.

(3) The issue of the alleged violation of Louisiana Act 275 of 1962 is to be treated in all respects as raised in the pleadings herein.

Attorney for Plaintiffs.

Attorney for Defendant,
James J. Saxon,
Comptroller of the Currency.

Attorney for Intervening
Defendant,
Whitney National Bank in
Jefferson Parish.

September 7, 1962.

Filed September 7, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER ALLOWING STATE BANK COMMISSIONER TO INTERVENE
AS A PLAINTIFF

A motion having been filed by J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, for leave to intervene as a plaintiff in this action, and all parties having consented to the granting of this motion, it is hereby

Ordered that the said J. W. JEANSONNE, State Bank Commissioner of the State of Louisiana, have leave to intervene in this cause and that he be and hereby is made an additional party plaintiff herein, and it is

Further Ordered that the Complaint of such intervening plaintiff, presently attached as an exhibit to the motion for intervention, may be filed in the Clerk's office in the same manner and with the same effect as if such intervening plaintiff had been named as an original party to this cause, and it is

Further Ordered that the caption of this action shall hereafter read as follows:

BANK OF NEW ORLEANS AND TRUST COMPANY, GUARANTY BANK
AND TRUST COMPANY, *Plaintiffs.*

BANK OF LOUISIANA IN NEW ORLEANS, J. W. JEANSONNE,
State Bank Commissioner of the State of Louisiana,
Intervening Plaintiffs,

v.

JAMES J. SAXON, Comptroller of the Currency, *Defendant,*
WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Intervening
Defendant.*

Done this — day of September, 1962.

_____,
United States District Judge.

We consent:

EDWARD L. MERRIGAN,
Attorney for Plaintiffs.

DAVID V. SEAMAN,
*Attorney Department of Justice
Attorney for Defendant
Comptroller of the Currency*

W. GRAHAM CLAYTOR, JR.,
*Attorney for Intervening
Defendant Whitney National
Bank in Jefferson Parish.*

Filed September 7, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER ALLOWING INTERVENING DEFENDANT WHITNEY NATIONAL BANK IN JEFFERSON PARISH TO SERVE AND FILE AN AMENDED ANSWER.

Intervening Defendant Whitney National Bank in Jefferson Parish having moved the Court for leave to serve and file an amended answer herein in accordance with the provisions of Rule 15(d) of the Federal Rules of Civil Procedure, it is hereby

Ordered, That the Intervening Defendant Whitney National Bank in Jefferson Parish have leave to serve and file such amended answer.

Done this — day of September, 1962

United States District Judge.

No Objection:

Attorney for Plaintiffs.

Attorney for Defendant,
James J. Saxon,
Comptroller of the Currency.

Filed September 14, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF INTERVENING
DEFENDANT

STATE OF LOUISIANA,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared JAMES GILLY, JR., who, being by me duly sworn, deposes and says:

1. I am a resident of the City of New Orleans and President of the Whitney National Bank in Jefferson Parish. This Affidavit is made to supplement the Affidavit made in these proceedings on June 16, 1962, as supplemented on August 3, 1962.

2. When Whitney National Bank in Jefferson Parish (hereinafter called "Whitney-Jefferson") is in operation, it will have no officer or employee common with Whitney National Bank in New Orleans (hereinafter called "Whitney-New Orleans"), other than affiant who would be the only common officer. As disclosed in affidavit of James Gilly, Jr. dated June 16, 1962, there are four common directors.

3. Whitney-Jefferson and Whitney-New Orleans are entirely separate corporate entities, each with its own certificate of organization and approval of the Comptroller of the Currency. Whitney-Jefferson has been recognized by both the Comptroller of the Currency and the Board of Governors of the Federal Reserve System as a newly organized independent bank. Whitney-Jefferson will operate a banking house entirely separate from that of the Whitney-New Orleans.

4. Whitney-Jefferson has subscribed to three hundred sixty (360) shares of par value of the capital stock of the Federal Reserve Bank of Atlanta and paid for such stock in accordance with the provisions of Section 2 of the Fed-

eral Reserve Act (12 U.S.C. Section 282). Its legal reserve will be carried in that institution and it will establish correspondent banking relations with the Whitney-New Orleans and with such other banks as may prove convenient and desirable in the operations of its business.

5. The Capital and surplus of Whitney-Jefferson is \$600,000.00 and the capital and surplus of Whitney-New Orleans is \$30,000,000.00 and because of the loan limit which in most cases is 10% of its capital and surplus, Whitney-Jefferson may in its discretion offer participations in loans to Whitney-New Orleans and other banks. Whitney-New Orleans in the course of its regular business participates in loans made by other banks.

6. Of the seven banks domiciled in Jefferson Parish, only one is a member of the New Orleans Clearing House Association, and that institution is an associate member. The banks in that Parish, however, avail themselves of the clearing privileges through the services of a correspondent, one of the four New Orleans banks who make up the Clearing House Association, and the Whitney-Jefferson proposes to clear through the Whitney-New Orleans.

7. Whitney-Jefferson will have its own vault and will act in accordance with established banking practices as to any cash which it considers to be excess. Whitney-Jefferson will not have as of the time of its opening a night depository, and should the use of a night depository be deemed desirable, Whitney-Jefferson would provide itself with such facilities as might be available, including the installation of a night depository in its own banking house or the rental of other facilities.

8. Whitney-Jefferson has and will maintain its own books of account and its own stationery, checks and forms, none of which mention Whitney-New Orleans.

9. No customer of Whitney-Jefferson will have a contractual right to make deposits at Whitney-New Orleans to be credited to his account at Whitney-Jefferson. It is, however, normal banking practice in instances where deemed desirable, for an independent bank to take a deposit from one of its customers and remit it to another bank designated by the customer for the customer's account. Whitney-Jefferson will expect to pursue normal banking practices in this regard.

10. No customer of Whitney-Jefferson will have a contractual right to withdraw funds at Whitney-New Orleans

to be charged to his account at Whitney-Jefferson. It is normal banking practice for an independent bank to cash checks drawn on other banks in instances where it feels that such action may improve the cashing bank's status in the community or may gain favor with the person cashing the check.

11. The initial meeting of shareholders of Whitney-Jefferson was held on May 10, 1962 and the Directors named in Exhibit 4 attached to the affidavit of James Gilly, Jr., dated August 3, 1962 were elected at that meeting.

12. The articles of association and certificate of organization of Whitney-Jefferson were adopted and executed on May 10, 1962 and transmitted on that date to the Comptroller of Currency. The corporate existence of Whitney-Jefferson was confirmed by letter from William B. Camp, Deputy Comptroller of Currency, dated May 11, 1962, a copy of which is annexed hereto as Whitney Exhibit 6.

13. On May 24, 1962, the aforesaid Directors paid the price for their qualifying shares and were sworn, qualified and took office. Likewise, on May 24, 1962 the Directors adopted by-laws and elected officers.

14. On June 15, 1962, Whitney-Jefferson subscribed for three hundred sixty (360) shares of \$100.00 par value stock of the Federal Reserve Bank of Atlanta, Georgia, and paid the necessary portion of the subscription price as required by the Federal Reserve Act, namely \$18,000.00.

15. As shown by Whitney Exhibit 5 attached to affidavit of E. A. Waffenschmidt dated August 3, 1962, out of a total 105,298 shares voting, 12,024 shares of Whitney National Bank of New Orleans stock were voted against the consolidation agreement between that Bank and Crescent City National Bank. The consolidation was effected on May 24, 1962 and at this point Whitney Holding Corporation was the owner of all of the shares (except directors' qualifying shares) of Whitney National Bank of New Orleans (as consolidated), subject to the rights of those who had voted against the consolidation to perfect their dissents pursuant to the terms of 12 U.S.C. Section 215(b). No shareholder requested receipt of the value of his shares within thirty days after the consolidation pursuant to 12 U.S.C. Section 215(b).

16. During the period June 4-June 8, 1962, Whitney-Jefferson commenced negotiations for a temporary site for its

banking operations with the owner of the premises 4407 Jefferson Highway. On June 13, 1962, Whitney-Jefferson instructed and authorized the real estate agent negotiating the lease on behalf of Whitney-Jefferson to enter into a formal lease agreement on its behalf, which lease was executed and effective June 15, 1962. There was no self-service "Washateria" or any activity of that nature, in operation at 4407 Jefferson Highway on July 3, 1962, and there had been none since prior to the time of commencement of the negotiations aforesaid. Affiant knows of no obstacle which would have prevented the completion of a lease agreement prior to June 15, 1962. Whitney-Jefferson at any time on or subsequent to June 9, 1962 was in a position to commence banking operations in available premises within twenty-four hours after the issuance of a certificate of authority to commence business by the Comptroller of Currency. All equipment, furniture and supplies necessary to open the bank were on hand. Since time of commencement of negotiations for the lease as aforesaid, there was no furniture or equipment in the premises 4407 Jefferson Highway and no indication of prior use as a self-service "Washateria" other than readily removable exterior signs on the premises.

17. Whitney-Jefferson finally acquired its proposed permanent site, 4408 Jefferson Highway, on June 29, 1962. The "Royal Tourist Court" has not been in operation since that time.

/s/ JAMES GILLY, JR.

Sworn to and Subscribed before me this 8 day of September, 1962. †

BARTHOLOMEW P. SULLIVAN, JR.,
Notary Public.

September 14, 1962

INTERVENING WHITNEY EXHIBIT 6

TREASURY DEPARTMENT
Comptroller of the Currency
Washington 25, D.C.

May 11, 1962.

Mr. Malcolm L. Monroe
Monroe & Lemann
Attorneys and Counsellors at Law
Whitney Building
New Orleans 12, Louisiana

Re: "Whitney National Bank in Jefferson Parish",
Louisiana, organizing

Dear Mr. Monroe:

We have your letter of May 10, enclosing the following organization papers of the subject bank:

Articles of Association
Organization Certificate
Waiver of Notice of Meeting of Shareholders
Minutes of Meeting of Shareholders
General Form or Bylaws
Official Signatures of Officers
List of Directors

These documents, with the exception of the Bylaws and Official Signatures of Officers have been placed on file.

The Official Signatures of Officers should be re-executed (additional form enclosed) after the Directors become qualified to elect them and the date of their election should be inserted thereon. As you know, the elected Directors in order to qualify must own in their own right shares of the capital stock of the association the aggregate par value of which is not less than \$1,000. When this has been accomplished we should be furnished with an affidavit from the Attorney for the bank stating that the Directors paid for the qualifying shares of stock in their own names.

The Bylaws are being returned for execution after the Directors have qualified as set forth above.

Since the corporate existence of the national bank has

now been established with the filing of the Articles of Association and Organization Certificate, in acceptable form, contracts may be entered into and disbursements for the purchase of equipment, supplies, etc., from the capital funds of the bank may properly be made. It is important, of course, that complete data and supporting documents be maintained for subsequent use in recording the disbursements made from the capital funds on the new bank's general ledger.

Before charter can be issued, it will be necessary for the following to have been received in this office, in proper form:

(1) Affidavit from the Attorney for the bank stating that the Directors own in their own right shares of the capital stock of the association the aggregate par value of which is not less than \$1,000.

(2) Executed General Form of Bylaws.

(3) Re-executed Signatures of Officers.

(4) Certificate of Payment of Capital Stock.

(5) Notification from the Federal Reserve Bank of Atlanta, Georgia, that the required payment has been made on the subscription to Federal Reserve Stock.

(6) About ten days in advance of the anticipated date for the opening for business, this office should be furnished with an itemized list of disbursements made from the capital funds of the bank, also a detailed list of all of the organization expenses of every type which the bank is committed for, but which are not paid or for which checks have been issued and are outstanding. Certified copies of the minutes of the meetings or meetings of the Board of Directors at which the expenses incurred (other than those previously approved by the shareholders) were approved by the Board should be submitted with the list. If the expenses include any Attorney's fee a copy of the Attorney's bill submitted to the organizers showing the nature of the services rendered, the hours devoted to the task and the separate charges made therefor, should accompany the minutes. As of the same date, an officer of the depository bank should certify to us the amount remaining in the account of the organizing bank. If any disbursements listed are represented by checks that have not cleared at that time, those items should be prop-

erly identified in order to enable reconciliation of the funds on hand with the total capital funds collected.

Upon receipt of advice that the above requirements have been met and a definite date for the opening of the bank has been determined, the case will have further attention.

Very truly yours,

/s/ WILLIAM B. CAMP,
Deputy Comptroller of the Currency.

Enclosures

Filed September 18, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

Civil Action No. 1857-62

ANSWER OF INTERVENING DEFENDANT TO COMPLAINT OF INTER-
VENING PLAINTIFF, J. W. JEANSONNE, STATE BANK COM-
MISSIONER OF THE STATE OF LOUISIANA.

Whitney National Bank in Jefferson Parish, the interven-
ing defendant, answers the complaint of intervening plain-
tiff, J. W. Jeansonne, State Bank Commissioner of the State
of Louisiana, as follows:

First Defense

The complaint fails to state a claim upon which relief
can be granted.

Second Defense

1

It is admitted that intervening plaintiff, State Bank Com-
missioner of the State of Louisiana (hereinafter called the
Commissioner), under the terms of the statutes described in
Paragraph 1 is charged with certain administrative duties as
described therein. The allegations contained in paragraph 1
are otherwise denied, and intervening defendant specially
avers that such powers as may be vested in the Commis-

sioner by virtue of said statutes are restricted to banks organized under the laws of the State of Louisiana.

2

It is admitted that the Commissioner is suing on his own behalf as the State Bank Commissioner of the State of Louisiana. The allegations contained in Paragraph 2 are otherwise denied.

3

The allegations of the first sentence of Paragraph 3 are admitted. Intervening defendant denies the allegations of the second sentence of Paragraph 3 except to admit that Whitney Holding Corporation, a corporation duly organized under the laws of the State of Louisiana and duly recognized as a bank holding company pursuant to the applicable Federal statutes, owns all of the outstanding stock of Whitney National Bank of New Orleans, except directors' qualifying shares.

4

The allegations contained in Paragraph 4 are denied, except to admit the existence of 28 U.S.C. § 1331. Intervening defendant specially avers that insofar as the subject matter of the complaint of the Commissioner involves the Comptroller of the Currency, it is strictly within an area committed to the sole and uncontrolled discretion of said Comptroller and is not subject to judicial review.

5

The allegations of the first sentence of Paragraph 5 are admitted. The allegations of the second sentence deal in relative terms and if called upon to admit or deny the said allegations, intervening defendant denies same for lack of sufficient information to justify a belief. Intervening defendant admits that as of June 30, 1961 it held approximately 39% of the total deposits of all banks in the Parish of Orleans, State of Louisiana, and 44% of all deposits of individuals, partnerships and corporations, but the remaining allegations of the third sentence of the first paragraph of Paragraph 5 are in relative terms, and if called upon to admit or deny said allegations, intervening defendant de-

nies same for lack of sufficient information to justify a belief.

The allegations of the second paragraph of Paragraph 5 are denied for lack of sufficient information to justify a belief.

6

The allegations contained in Paragraph 6 are denied, except to admit the existence of 12 U.S.C. § 36, and intervening defendant specially avers that said § 36 has no application to the subject matter of the complaint of the Commissioner.

7

Intervening defendant admits the existence of Louisiana Revised Statutes 6:54, which is applicable only to banks organized under the laws of the State of Louisiana. Intervening defendant otherwise denies the allegations of Paragraph 7 and avers that said statutory provision has no application whatsoever to the subject matter of the complaint of the Commissioner.

8

The allegations contained in Paragraph 8 are denied except to admit the existence of the banks named in said paragraph. Intervening defendant specially avers that one of said banks, namely Merchants Trust and Savings Bank, originally was a plaintiff in this litigation, and later was permitted to withdraw as a plaintiff at its own request.

9

The allegations of Paragraph 9 are denied, except to admit the existence of the banks named therein and to admit that there is competition among the banks located in Orleans Parish (City of New Orleans) Louisiana. National Bank of Commerce in New Orleans, the second largest bank in the Parish of Orleans, has established in Jefferson Parish an affiliate under the name National Bank of Commerce in Jefferson Parish, which affiliate has been operating in Jefferson Parish since 1955. This banking operation now has a main office and four branches in Jefferson Parish. Likewise, one of the major stockholders and directors of National American Bank in New Orleans, the fourth largest bank in the Parish of Orleans, is a director of and holds forty per

cent (40%) of the stock of Merchants Trust and Savings Bank a state-chartered banking operation in Jefferson Parish which was originally a plaintiff in this litigation and subsequently was permitted to withdraw. The Commissioner has never made and is not now making any attempt to prevent these two operations in Jefferson Parish.

10

The allegations contained in Paragraph 10 are denied.

11

Intervening defendant denies the allegations of Paragraph 11 except to admit that Whitney National Bank of New Orleans, Crescent City National Bank, and Whitney Holding Corporation participated in a reorganization program, all of the phases of which received the required approvals of the appropriate regulatory authorities. In addition, intervening defendant avers that Crescent City National Bank was properly organized and received due approval of, and a certificate of authority to commence business from, the Comptroller of the Currency, which action on the part of the Comptroller of the Currency was in an area committed to his sole discretion and is not subject to judicial review. Intervening defendant avers also that the matters alleged in Paragraph 11 have no bearing whatsoever on the subject matter of the complaint of the Commissioner.

12

The allegations of Paragraph 12 are denied.

13

The allegations of Paragraph 13 are denied, except to admit that all due approvals were obtained with respect to the steps actually taken, and that defendant Comptroller has filed an affidavit in this proceeding under date of August 9, 1962, which contains the paragraphs quoted.

14

The allegations of paragraph 14 are denied, except to admit that intervening defendant has filed a supplemental

answer by leave of this Honorable Court which contains the paragraphs quoted.

15

The allegations of Paragraph 15 are denied.

16

The allegations of Paragraph 16 are denied.

17

The allegations of Paragraph 17 are denied, except to admit that there are certain restrictions on the establishment by state banks located in Jefferson Parish of branches in other parishes.

18

The allegations of the first two sentences of Paragraph 18 are in relative terms and if called upon to admit or deny same, intervening defendant denies the allegations thereof. Intervening defendant denies the allegations of the third sentence of Paragraph 18 except to admit that Louisiana law contains certain restrictions on the establishment by state banks located in Orleans Parish of branches in other parishes. The allegations of the fourth sentence of Paragraph 18 are denied.

19

The allegations of Paragraph 19 are denied, and intervening defendant avers that "farther expansion of Whitney Holding Corporation" would be regulated by such officers, boards and bodies as would be proper under statutes and regulations to the extent validly applicable, including the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841-48.

20

The allegations of Paragraph 20 are denied.

Third Defense

1

All action taken by Whitney National Bank of New Orleans, Crescent City National Bank, Whitney Holding Corporation and intervening defendant in connection with the

subject matter of the complaint of the Commissioner has been taken openly and with full disclosure of all relevant facts and without subterfuge of any kind.

2

The organization of the intervening defendant in no way circumvents, and its commencement of the business of banking in Jefferson Parish, Louisiana, would in no way circumvent, the provisions and purposes of the National Banking Act, but are entirely consistent therewith and authorized thereby. The purpose of the organization of the intervening defendant was to furnish Jefferson Parish the additional local banking facilities urgently needed and sought by those residing and doing business in said Parish, as well as to give Whitney Holding Corporation and its stockholders an opportunity to share in the potential growth offered to banks serving said Parish.

3

The banking facilities to be established by intervening defendant will not in any way or for any purpose constitute a "branch" or "branch facility" of either Whitney National Bank of New Orleans or Whitney Holding Corporation, but intervening defendant is a legal entity separate and distinct from Whitney National Bank of New Orleans and Whitney Holding Corporation.

4

The issuance to intervening defendant by defendant, the Comptroller of the Currency, of a certificate of authority to commence the business of banking will be in accordance with the applicable provisions of the National Bank Act (12 U.S.C. §§ 21-27) and will be within the authority and discretion vested thereby in said defendant.

Fourth Defense

1

The Commissioner attempts to rely upon Act 275 of the Louisiana Legislature of 1962. Said Act was first introduced into the Louisiana House of Representatives as House Bill 1221 on June 3, 1962, just six days prior to the filing

of this suit by the Bank of New Orleans and Trust Company et al. House Bill 1221 was certified by the Governor as emergency legislation on July 4, 1962. Under Louisiana law, House Bill 1221 became immediately effective as law when it was signed by the Governor as Act No. 275 on July 10, 1962, at 4:45 p.m.

2

As first introduced in the House of Representatives, House Bill 1221 would not have prevented Whitney National Bank in Jefferson Parish from opening for business as the stock of said bank was already owned by Whitney Holding Corporation. Subsequent to the granting of a temporary restraining order by this Court on June 27, 1962, which prevented the Comptroller of the Currency from issuing a certificate to commence business to Whitney National Bank in Jefferson Parish, House Bill 1221 was amended by the insertion therein of the present Sub-section 5 of Section 3 of Act 275 (hereinafter referred to as Section 3(5)), which specifically provides as follows:

“Section 3. Prohibitions upon Acquisition of Bank Shares or Assets.

“It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof *to open for business* any bank not now opened for business, *whether or not, a charter, permit, license or certificate to open for business has already been issued.*” (Underscoring added.)

3

The temporary restraining order issued herein on June 27, 1962, and the preliminary injunction granted by this Court on July 6, 1962, dated July 10, 1962 both of which enjoined the Comptroller of the Currency from issuing a certificate to commence business, were the sole reason that Whitney National Bank in Jefferson Parish did not open its doors for business several weeks prior to July 10, 1962, the effective date of Act No. 275.

4

Because Louisiana Act 275 became effective on July 10, 1962, the *status quo* has been altered since June 27, 1962, the date on which the temporary restraining order was issued.

The Commissioner relies upon Section 3(5) of Act 275 as a ground for judgment in his favor. Consequently, it is necessary that the applicability and constitutionality of Section 3(5) of Act 275 be passed upon if intervening defendant is to be restored to the former position in which it would be had the temporary restraining order not been issued.

5

Intervening defendant specially avers that Act 275 furnishes no basis for granting the Commissioner's request for declaratory relief or for an injunction, either temporary or permanent, against either defendant Comptroller of the Currency or intervening defendant, because Section 3(5) of Act 275 does not apply to the Comptroller of the Currency or to a national bank such as Whitney National Bank in Jefferson Parish.

6

Intervening defendant further avers that Section 3(5) of Act 275, if applicable, violates the statutes and Constitution of the United States in the following respects:

(a) Section 3(5), as attempted to be applied here by the Commissioner, is invalid under the supremacy clause of the United States Constitution (Article VI, Clause 2) in at least two respects:

- (1) It would prevent the Comptroller from issuing, in his sole discretion, to a properly and legally organized and chartered national bank, a certificate of authority to commence the business of banking, and is therefore in direct conflict with 12 U.S.C. §§ 26 and 27.
- (2) It would prevent the opening of a national bank as properly chartered and organized under federal law, and in this respect is likewise in direct conflict with 12 U.S.C. §§ 26 and 27.

(b) Section 3(5) of Act 275, as attempted to be applied here by the Commissioner, violates the Fourteenth Amendment to the United States Constitution in two respects:

- (1) Section 3(5), if applied to Whitney National Bank in Jefferson Parish, constitutes an arbitrary, capricious and unreasonable classification that denies

equal protection of law to the intervening defendant.

- (2) Whitney National Bank in Jefferson Parish had completed all steps required by law and was ready to commence business several weeks prior to the effective date of Act 275. Intervening defendant, therefore, had a vested property right which Section 3(5) of Act 275 denies intervening defendant without due process of law.

(c) Section 3(5) of Act 275, as attempted to be applied here by the Commissioner, violates Article I, Section 10 of the United States Constitution in that it impairs the obligation of a contract between the federal government and the intervening defendant.

WHEREFORE, intervening defendant prays that:

- (1) The Court enter a judgment declaring and adjudging that defendant, Comptroller of the Currency, is authorized and empowered by the provisions of the National Bank Act

(12 U.S.C. §§ 21-27) in his sole discretion to issue to intervening defendant a certificate of authority to commence the business of banking in Jefferson Parish, Louisiana.

- (2) The Court deny the prayer of the complaint of intervening plaintiff, J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, for a permanent injunction against defendant.

- (3) The Court enter a judgment herein declaring that Section 3(5) of Louisiana Act 275 of 1962 does not apply either to defendant, Comptroller of the Currency, or to intervening defendant, Whitney National Bank in Jefferson Parish, or alternatively, that there be a judgment declaring that the said Section 3(5) of Act 275 is unconstitutional and void.

Intervening defendant further prays for all legal, equitable and declaratory relief.

/s/ BRICE M. CLAGETT,
*Attorney for Intervening Defendant
Whitney National Bank in
Jefferson Parish*

Filed September 25, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MOTION OF THE NATIONAL ASSOCIATION OF SUPERVISORS OF
STATE BANKS FOR LEAVE TO APPEAR AS AMICUS CURIAE.

The National Association of Supervisors of State Banks respectfully moves this Court for an order permitting it to appear as an *Amicus Curiae* in the above-captioned proceeding for the limited purpose set forth below. In support of this motion, the Movant respectfully states as follows:

1. The Plaintiff and Intervening Plaintiffs consent to this Motion. The Defendant and Intervening Plaintiff do not object to Movant's appearance as an *Amicus Curiae* for the limited purposes set forth herein.

2. The National Association of Supervisors of State Banks was founded in 1902 and has 52 Members. It is composed of the officials of State governments responsible for the supervision of State-chartered banking institutions in every State in the Union, and of such officials in the Commonwealth of Puerto Rico and in the Virgin Islands. As of December 31, 1961, State-chartered banking institutions under their jurisdiction numbered 9,446 with total resources in excess of 150 billion dollars.

3. The facts of this case, and the relevant statutes, have been ably set out in the pleadings already filed with this Court and will not be repeated here.

4. The two questions of law raised by the various motions for summary judgment which have been filed, and upon which Movant would like to be heard, are as follows:

- (a) whether Louisiana Act 275 of 1962 relating to bank holding companies acts as a bar to the issuance of a certificate of authority by the Defendant, Comptroller of the Currency, to the Intervening Defendant, Whitney National Bank in Jefferson Parish, and, if so, whether said act is constitutional; and

- (b) whether the issuance of a certificate of authority by the Defendant, Comptroller of the Currency, to the Intervening Defendant, Whitney National Bank in Jefferson Parish, would constitute an unlawful evasion of the provisions of Section 36(c) of the National Bank Act, 12 U.S.C. 36(c).

5. Movant herewith requests permission to file a Memorandum, as *Amicus Curiae*, on the foregoing two questions. Said Memorandum will be filed on September 25, 1962, which is the date established by an order of Judge Walsh for any further pleadings or memoranda in this case.

6. Movant's interest in the first question set forth above is as follows: There are presently a number of States which prohibit or restrict bank holding companies, or any expansion thereof. Many of these statutes specifically encompass National banks. Accordingly, any holding of this Court that Louisiana Act 275 of 1962 does not bar the expansion of a banking holding company organized under Louisiana statutes to include a National bank in its system, or that the Law is unconstitutional if such is its intention, may affect the validity of other State statutes seeking to prohibit or restrict the expansion of bank holding companies.

7. Movant's interest in the second question is as follows: As this Court has noted, in the National Bank Act "Congress has adopted state law on the establishment of branches by state banks as the measuring stick for the establishment of branches by national banks. 12 U.S.C. 36(c)." *Commercial State Bank of Roseville v. Gidney*, 174 F. Supp. 770, 774 (1959), aff'd. 278 F. 2d 871 (D.C. Cir. 1960). The law of the State of Louisiana does not authorize State banks (with capital in excess of \$100,000) to establish branches in any Parish beyond the Parish in which its main office is located, if another bank is already located and operating in the Parish into which the large bank would like to expand. (L.R.S. 6:54) Accordingly, under the facts of this case, the Whitney National Bank of New Orleans could not establish a branch in neighboring Jefferson Parish where there are presently other banks in operation. In Movant's opinion, the transaction here involved constitutes an unlawful evasion of the branch banking laws of the National Bank Act inasmuch as it unlawfully evades the branch banking laws of the State of Louisiana. A decision on this matter would also constitute a precedent in the thirty-two States

with statutes either prohibiting or limiting branch banking because the Defendant Comptroller may only be sued in the District of Columbia without his consent.

8. Movant's Members seek appearance before this Court, not in an official capacity of speaking for their respective State governments, but as a group of experts on these important legal issues in which they have a common interest and which have a national impact. They believe that their opinion as to the law on the questions will be of assistance to the Court.

9. Under similar circumstances Movant has previously been granted authority by this Court, and by the Court of Appeals for the District of Columbia, to appear as an *Amicus Curiae*: *Camden Trust Company v. Gidney*, (District Court, Civil Action No. 2-61) aff'd. 301 F. 2d 521 (1962), cert. denied 369 U.S. 886 (1962); *Old Kent Bank & Trust Co. v. Martin*, 172 F. Supp. 951 (1959); aff'd. 281 F. 2d 61 (1960).

WHEREFORE, the National Association of Supervisors of State Banks respectfully moves this Court for an order permitting it to appear as an *Amicus Curiae* in the above-captioned proceeding for the limited purpose set forth above.

Respectfully submitted

/s/ James F. Bell

1001 Connecticut Avenue, N. W.
Washington 6, D. C.

Attorney for Movant.

September 25, 1962

Consents:

_____,
Defendant,
Comptroller of the Currency.

_____,
Intervening Defendant,
Whitney National Bank
in Jefferson Parish.

_____,
Plaintiffs,
Bank of New Orleans and Trust
Company,
Guaranty Bank & Trust Company.

*Intervening Plaintiff,
Bank of Louisiana in New Orleans.*

*Intervening Plaintiff,
J. W. Jeansonne,
Louisiana State Bank Commissioner.*

APPENDICES TO MEMORANDUM OF AMICUS CURIAE
NATIONAL ASSOCIATION OF SUPERVISORS OF STATE BANKS,
FILED SEPTEMBER 25, 1962

APPENDIX A

Summary of State Laws Affecting Bank Holding Companies (1962)
States Restricting or Prohibiting Bank Holding Companies

State:

Georgia

Code of Georgia Anno., Section 13-201.1, 13-207, enacted February 9, 1960.¹

Illinois

Smith-Hurd Ill. Anno. Stat., Ch. 16-1/2, Sections 71 through 76, enacted July 5, 1957.²

Indiana

Burns Ind. Stat. Anno., Sections 18-1814 through 18-1817, enacted March 12, 1957.³

Kansas

Gen. Stat. of Kansas Anno., Sections 9-504 through 9-507, enacted June 29, 1957.³

Kentucky

Ky. Revised Stat., Section 287.030, enacted in 1938.⁴

Louisiana

La. Revised Stat., Title 6, Ch. 12, Sections 1001 through 1006, enacted July 10, 1962.⁵

Michigan

Michigan Stat. Anno., Section 21.10, enacted October 17, 1933. (See *Peoples Savings Bank v. Stoddard*, 359 Mich. 297, 102 N.W. 2d 777, 792 (Supreme Court, 1960) (dictum) for applicability to National banks).

State:

Mississippi

Miss. Code, Section 5235, enacted April 2, 1934.

New Jersey

N. J. Stat. Anno., Sections 17:9A-344 through 17:9A-354, enacted June 5, 1957.¹

Pennsylvania

Purdon's Pa. Stat. Anno., Title 7, Sections 851 through 855, enacted July 11, 1957.²

South Carolina

Code of Laws of S.C., Section 12-77, enacted March 13, 1940.⁷

Vermont

Vermont Stat. Anno., Title 11, Section 131, enacted April 1, 1915.

Washington

Revised Code of Wash., Section 30.01.230, enacted February 27, 1933.³

West Virginia

W. Va. Code Anno., Section 3220, enacted February 28, 1959 (effective in 90 days).

States Permitting Bank Holding Companies with State Approval

State

Florida

Fla. Stat. Anno., Section 659.14, enacted May 20, 1953.

Massachusetts

Mass. Gen. Laws Anno., Ch. 167A, Sections 1 through 7, enacted September 21, 1957.

New York

Book 4, Banking Law, Art. III-A, Sections 141-147, first enacted January 29, 1957.

Note: The statutes of Florida and Washington are specifically limited in their application to State Banks. The remaining statutes either provide expressly that they are applicable to National banks as well as State banks, or they apply generally to all "banks", "banking corporations", "banking institutions", or in the case of the Vermont statute, only to "corporations."

¹ Company cannot acquire more than 5% of the stock of two or more banks.

² Company cannot acquire more than 15% of the stock of two or more banks.

³ Company cannot acquire more than 25% of the stock of two or more banks.

⁴ Company cannot acquire more than 50% of the stock of a bank.

⁵ Company cannot acquire more than 25% of the stock of a bank.

⁶ Company owning more than 25% of the stock of a bank cannot acquire more than 10% of the stock of another bank.

⁷ Company cannot acquire more than 49% of the stock of a bank.

* The date of enactment is in each case the date that the statute presently effective became effective in its original form.

APPENDIX B

Summary of State Laws Restricting or Prohibiting Bank Holding Companies
Prior to the Passage of the Bank Holding Company Act of 1956¹*State*

Georgia

Ga. Laws 1956, Vol. 1, pp. 309-312, enacted February 27, 1956. See Appendix C.²

Illinois

Ill. Laws 1955, 69th Gen. Assembly, at pp. 1372 and 1373, enacted July 11, 1955. Company cannot acquire more than 15% of the stock of two or more banks.³

Kentucky

See Appendix A.

Michigan

See Appendix A. Corporation may not hold bank stock unless it was acquired as part of a plan of reorganization.

Mississippi

See Appendix A. Prohibits bank holding companies.

South Carolina

See Appendix A.

Vermont

See Appendix A.

Washington

See Appendix A.

West Virginia

See Appendix A. Prohibits bank holding companies.

Note: The Washington statute is specifically limited in its application to State banks.

¹ May 9, 1956.

² These sections, quoted in Appendix C, were repealed on February 9, 1960, when the presently effective Section 13-207 was enacted.

³ Repealed on July 5, 1957, when the presently effective Sections 71-76 were enacted.

APPENDIX C

GEORGIA BANK HOLDING COMPANY ACT OF 1956

"BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA AS FOLLOWS:

Section 1. The maintenance of competitive services between banks has been found to be the best method of serving the public. There are dangers in the concentration of economic power through centralized control of banks. It is, therefore, held to be in the public interest to curtail such concentration of economic power by preventing the expansion of bank holding companies and similar organizations.

Sec. 2. Unless the context requires otherwise: (a) 'Bank' means any national bank or State bank, banking association, savings bank or trust company, whether organized under the laws of Georgia, the laws of another State, or the laws of the United States, doing business in the State of Georgia.

(b) 'Company' means any bank, corporation, partnership, joint stock company, business trust, voting trust, association or similarly organized group of persons, whether incorporated or not, and includes the shareholders and those persons who otherwise own the company and including any foreign corporation or other organization or association doing business in Georgia, but shall not include any corporation or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(c) 'Bank holding company' means any company incorporated or organized under the laws of the State of Georgia or doing business in Georgia, which directly or indirectly owns, controls or holds, with power to vote, 15 percent or more of the voting stock of each of 2 or more banks.

(d) A company will be construed to own, control or hold, with power to vote, stock indirectly whenever any officer or shareholder of such company or any natural person included within the definition of 'company' in section (b) of this Act or any member of the immediate family of such officer or

shareholder or of such natural person, shall own, control or hold, with power to vote, such stock. Immediate family includes a spouse, children, mother, father, brother, and sister.

Sec. 3. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, such voting stock as it owns, controls, or holds on the effective date of this act. Also, in municipalities now having branches of a bank with a holding-company relation, such bank may make branches of existing holding-company banks; and in the future in cities of over 80,000 population, according to the 1950 or subsequent census, now having branches of a bank, present branches will have the same privilege of additional branches as permitted to other banks.

Sec. 4. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of a bank holding company, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, that stock of a bank holding company which it owns, controls, or holds on the effective date of this act.

Sec. 5. It shall be unlawful for any company hereafter to acquire, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for any company to acquire, with power to vote the same, any stock in banks, a majority of whose voting stock such company owns, holds, or controls on the effective date of this act.

Sec. 6. It shall be unlawful for any company to acquire, with power to vote the same, 15 percent or more of the voting stock of a bank holding company.

Sec. 7. It shall be unlawful for any foreign company owning, controlling, or holding, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, to vote more than 15 percent of the stock of more than 1 such bank in any 1 year, except that it shall not be unlawful for a company to vote that voting stock which it owns, controls, or holds on the effective date of this act.

Sec. 8. This act shall not apply to the holding by a com-

pany in respect of its owning, controlling, or holding, with power to vote, stock in a bank or banks or bank holding company or companies in a fiduciary capacity, unless such stock is held for the benefit of another company or for the benefit of a majority of the stockholders of such bank.

Sec. 9. Any company which violates any provision of this act shall, upon conviction, be fined not less than \$500 nor more than \$1,500. Each day on which such violation occurs will constitute a separate offense.

Sec. 10. If any provision of this act or the application of any such provision to any person or circumstance shall be held invalid, the remainder of the act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be effected thereby.

Sec. 11. All laws and parts of law in conflict with this act hereby are repealed.

(Ga. Laws 1956, Vol. 1, pp. 309-312. Repealed February 9, 1960. See Code of Ga. Anno., Section 13-207.)

APPENDIX D

Summary of Branch Banking Statutes of the 50 States, Puerto Rico, and Virgin Islands

States Permitting Statewide Branch Banking

State	Citation
Alaska	Sess. Laws of Alaska, Section 3.208
Arizona	Arizona Revised Stat. Anno., Sec. 6-223
California	Calif. Financial Code Anno., Sec. 500
Connecticut	Gen. Stat. of Conn., Revision of 1958, Sec. 36-59
Delaware	2 Del. Code Anno., Title 5, Sec. 770
Hawaii	Revised Laws of Hawaii, Sec. 178-39
Idaho	Idaho Code, Sec. 26-1001
Louisiana	La. Revised Stat., Title 6, Sec. 54
Maryland	Anno. Code of Md. 1957, Art. 11, Sec. 65
Nevada	Nevada Revised Stat. Title 55, Ch. 660, Sec. 660.010
North Carolina	Gen. Stat. of N.C., Sec. 53-62
Oregon	Oregon Rev. Stat., Sec. 714.020
Rhode Island	Gen. Laws of R. I., Sec. 19-1-13
South Carolina	Code of Laws of S.C., Sec. 8-57
South Dakota	S.D. Code of 1939, Sec. 6.0402
Utah	Utah Code Anno., Sec. 7-3-6
Vermont	Vermont Stat. Anno., Title 8 Sec. 501
Washington	Revised Code of Wash., Sec. 30.40.020
Puerto Rico	Laws of P.R. Anno., Title 7, Sec. 111 (i)

States Permitting Branch Banking Within Limited Areas

State	Citation
Alabama	Acts of 1953, 1955, 1957; Code of Alabama, Sec. 125 (1)
Georgia	Code of Ga. Anno., Sec. 13-203.1
Indiana	5 Burns Ind. Stat. Anno., Sec. 18-1707
Kentucky	Ky. Revised Stat., Sec. 287.180
Maine	Revised Stat. of Maine, Ch. 59, Sec. 19-C (1961 Supp.); Ch. 59, Sec. 124 (1961 Supp.)
Massachusetts	Mass. Gen. Laws Anno., Ch. 172, Sec. 11 (1961 Supp.) Ch. 172 A, Sec. 12
Michigan	Mich. Stat. Anno., Secs. 23.762, 23.762 (1)
Mississippi	Miss. Code, Secs. 5228, 5229
New Jersey	N.J. Stat. Anno., Sec. 17:9A-19
New Mexico	N.M. Stat. Anno., Sec. 48-2-17
New York	Book 4, Banking Law, Sec. 105
Ohio	Page's Ohio Revised Code Anno., Sec. 1103.09
Pennsylvania	Purdon's Pa. Stat. Anno., Title 7, Sec. 819-204.1
Tennessee	Tenn. Code Anno., Sec. 45-211
Virginia	Code of Va., Art. 3, Sec. 6-26

States Prohibiting Branch Banking

Arkansas*	Ark. Stat. 1947 Anno., Sec. 67:319
Colorado	Colo. Revised Stat., Sec. 14-13-1
Florida	Fla. Stat. Anno., Sec. 659.06
Illinois	Smith-Hurd Ill. Anno. Stat., Ch. 16-1/2, Sec. 106
Iowa*	Ia. Code Anno., Sec. 528.51
Kansas*	Gen. Stat. of Kansas Anno., Sec. 9-111 (1959 Supp.)
Minnesota	Minn. Stat. Anno., Sec. 48-34
Missouri*	Vernon's Anno., Mo. Stat., Sec. 362.105
Montana	Revised Codes of Mont. Anno., Sec. 5-1028
Nebraska*	Revised Stat. of Neb., Sec. 8-1,105
North Dakota*	N. D. Revised Code, Sec. 6-03-14
Oklahoma*	Okla. Stat. Anno., Title 6, Ch. 19, Sec. 461
Texas	Vernon's Civil Stat. of Texas Anno., Art 342-903
West Virginia	W. Va. Code Anno., Sec. 3131
Wisconsin*	West's Wisc. Stat. Anno., Sec. 221.04

States with No Legislation Authorizing Branch Banking

New Hampshire
Wyoming
Virgin Islands

* These states permit certain offices with limited powers only.

Filed September 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action Number 1857-62

[Title omitted]

OPPOSITION OF J. W. JEANSONNE, STATE BANK COMMISSIONER
OF LOUISIANA TO THE MOTION FOR SUMMARY JUDGMENT BY
DEFENDANT, COMPTROLLER OF THE CURRENCY, AND WHITNEY
NATIONAL BANK IN JEFFERSON PARISH, INTERVENING DE-
FENDANT, AND CROSS-MOTION FOR SUMMARY JUDGMENT.

Now comes Intervening Plaintiff, J. W. JEANSONNE, State
Bank Commissioner of Louisiana, who opposes the motions
for summary judgment filed herein by the Defendant and
Intervening Defendant, and cross-moves for summary judg-
ment on the following grounds:

1

There is no genuine issue as to any material facts upon
which plaintiffs and Intervening-Plaintiffs rely in support
of cross-motions for summary judgment; and Plaintiffs are
entitled to summary judgment as a matter of law.

BENTLEY G. BYRNES,
Special Assistant Attorney General and
Attorney for,
J. W. Jeansonne, State Bank Commissioner
403 California Company Building,
New Orleans 12, Louisiana.

LIST OF EXHIBITS IN SUPPORT OF CROSS-MOTION FOR SUMMARY
JUDGMENT BY INTERVENING PLAINTIFF, J. W. JEANSONNE,
STATE BANK COMMISSIONER OF LOUISIANA.

1. Intervening Plaintiff adopts in support of his Motion for Summary Judgment the list of exhibits filed on behalf of Plaintiffs.

2. J. W. Jeansonne Affidavit, designated "Jeansonne, Exhibit No. 1".

Filed September 26, 1962

INTERVENING PLAINTIFF, J. W. JEANSONNE

EXHIBIT 1

STATE OF LOUISIANA,
Parish of Avoyelles:

Before me, the undersigned authority, personally came and appeared:

J. W. JEANSONNE, a person of the full age of majority and a resident of Marksville, Parish of Avoyelles, State of Louisiana, who after being by me, Notary, first duly sworn, did depose and say that:

1

I am the duly appointed and qualified State Bank Commissioner of Louisiana, and as such, I am charged by law with the duty of administering and enforcing the banking laws of Louisiana.

2

It is and has been the policy of the State of Louisiana to protect and foster the welfare and growth of independent unit banks, institutions owned and having their origins in local communities and deriving their business chiefly from the industrial, commercial and farming activities located therein. It was in furtherance of this policy that the State of Louisiana by statute prevented the undesirable concentration of control of banks and bank credits in the hands of a few large banks by prohibiting banks from expanding their activities into Parishes (Counties) beyond the Parish in which said banks are chartered to do business.

To the best of my knowledge, until the Whitney National Bank of New Orleans created the Whitney Holding Corporation for the express and announced purpose of expanding its operations into Jefferson Parish, Louisiana had not been faced with an attempt by a bank to frustrate its established policy by circumvention of the prohibition against branch banking through the medium of a holding company. Faced for the first time with the attempt by the Whitney National Bank, which was limited by both Federal and State law to carry on its banking business only in the Parish of Orleans, to expand its activities into the adjoining Jefferson Parish by means of creating, from its own resources, a bank holding corporation designed to own all of the stock of the existing Whitney National Bank as well as all of the stock of a proposed Whitney operation in Jefferson Parish, I requested the Attorney General of the State of Louisiana to render an opinion to me on the legality of this.

As a result of my request, the Attorney General rendered his written opinion to me as State Bank Commissioner. A copy of said opinion is attached to this affidavit as Exhibit 1.

Confronted with this effort by the Whitney National Bank to violate or circumvent the long existing Federal and Louisiana bank branching prohibitions merely by means of the creation of a holding company, the Louisiana Legislature enacted Act No. 275 of 1962, copy of which is also attached to this affidavit as Exhibit 2. Representatives of the Whitney organization desperately attempted to defeat this legislation during the legislative proceedings, but nevertheless the House of Representatives voted eighty to sixteen in favor of it, and the Senate voted twenty-eight to seven in favor thereof.

Because the Whitney National Bank of New Orleans and the holding company created by it were racing the Legislature of Louisiana in an attempt to open banking facilities in Jefferson Parish, the Governor of the State of Louisiana, pursuant to Constitutional authority, declared Act No. 275 of 1962 to be emergency legislation and it became law when signed by the Governor on July 10, 1962.

As the State Bank Commissioner I am charged with the duty of enforcing the Louisiana Bank Holding Company Act and preventing evasions thereof. Pursuant to this statutory obligation, I have appeared in this suit for the purpose of applying to this Court for such orders as may be necessary to enjoin and prohibit the Comptroller of the Currency from issuing his certificate to authorize the opening of banking facilities by the Whitney organization in violation of Act 275 of 1962 and the other applicable statutes, both Federal and State.

J. W. JEANSONNE.

Sworn to and subscribed before me this 21st day of September, 1962.

B. C. BENNETT,
Notary Public.

Filed September 26, 1962

EXHIBIT 3

SENATE BILL No. 30, LEGISLATURE, STATE OF GEORGIA, by
Senator Lambert

A bill to be entitled "An act to provide for the prohibition of the owning, controlling or holding by certain companies of more than 15 percent of voting stock of banks as defined therein and of bank holding companies as defined therein; to define company as included in said prohibition to include any bank, corporation, partnership, joint stock company, business trust, voting trust, association, or similarly organized group of persons and the shareholders and those persons who otherwise own the company or are officers thereof; to provide that stock held by the immediate family of a shareholder, owner, or officer of a company as defined in the act shall be construed to be owned, controlled or held by the company; to provide for restriction of certain foreign companies in voting stock of said bank or holding company; and to provide for certain exceptions to said prohibition and restriction and for other purposes."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA
AS FOLLOWS:

Section 1. The maintenance of competitive services between banks has been found to be the best method of serving the public. There are dangers in the concentration of economic power through centralized control of banks. It is, therefore, held to be in the public interest to curtail such concentration of economic power by preventing the expansion of bank holding companies and similar organizations.

Sec. 2. Unless the context requires otherwise: (a) "Bank" means any national bank or State bank, banking association, savings bank or trust company, whether organized under the laws of Georgia, the laws of another State, or the laws of the United States, doing business in the State of Georgia.

(b) "Company" means any bank, corporation, partnership, joint stock company, business trust, voting trust, association, or similarly organized group of persons, whether incorporated or not, and includes the shareholders and those persons who otherwise own the company and including any foreign corporation or other organization or association doing business in Georgia, but shall not include any corporation or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(c) "Bank holding company" means any company incorporated or organized under the laws of the State of Georgia or doing business in Georgia, which directly or indirectly owns, controls, or holds, with power to vote, 15 percent or more of the voting stock of each of 2 or more banks.

(d) A company will be construed to own, control, or hold, with power to vote, stock indirectly whenever any officer or shareholder of such company or any natural person included within the definition of "company"

in section (b) of this act or any member of the immediate family of such officer or shareholder or of such natural person, shall own, control or hold, with power to vote, such stock. Immediate family includes a spouse, children, mother, father, brother and sister.

Sec. 3. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, such voting stock as it owns, controls, or holds, on the effective date of this act. Also, in municipalities now having branches of a bank with a holding-company relation, such banks may make branches of existing holding-company banks; and in the future in cities of over 80,000 population, according to the 1950 or subsequent census, now having branches of a bank, present branches will have the same privilege of additional branches as permitted to other banks.

Sec. 4. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of a bank holding company, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, that stock of a bank holding company which it owns, controls, or holds on the effective date of this act.

Sec. 5. It shall be unlawful for any company hereafter to acquire, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for any company to acquire, with power to vote the same, any stock in banks, a majority of whose voting stock such company owns, holds, or controls, on the effective date of this act.

Sec. 6. It shall be unlawful for any company to acquire, with power to vote the same, 15 percent or more of the voting stock of a bank holding company.

Sec. 7. It shall be unlawful for any foreign company owning, controlling, or holding, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, to vote more than 15 percent of the

stock of more than 1 such bank in any 1 year, except that it shall not be unlawful for a company to vote that voting stock which it owns, controls, or holds on the effective date of this act.

Sec. 8. This act shall not apply to the holding by a company in respect of its owning, controlling, or holding, with power to vote, stock in a bank or banks or bank holding company or companies in a fiduciary capacity, unless such stock is held for the benefit of another company or for the benefit of a majority of the stockholders of such bank.

Sec. 9. Any company which violates any provision of this act shall, upon conviction, be fined not less than \$500 nor more than \$1,500. Each day on which such violation occurs will constitute a separate offense.

Sec. 10. If any provision of this act or the application of any such provision to any person or circumstance shall be held invalid, the remainder of the act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Sec. 11. All laws and parts of law in conflict with this act hereby are repealed.

Filed September 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER GRANTING MOTION OF THE NATIONAL ASSOCIATION OF
SUPERVISORS OF STATE BANKS FOR LEAVE TO APPEAR AS
AMICUS CURIAE

The National Association of Supervisors of State Banks,
having requested by Motion that it be permitted to appear as
Amicus Curiae in the above-entitled proceeding; and the

Court having fully considered the Motion; and it appearing that all of the above-named parties have consented:

It is ordered that the Motion of the National Association of Supervisors of State Banks for leave to appear as *Amicus Curiae* in this proceeding be and the same is hereby granted. Dated: September 26, 1962.

/s/ JOHN J. SIRICA,
District Judge.

Filed September 27, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

PLAINTIFFS' SUPPLEMENTAL STATEMENT OF GENUINE ISSUES
UNDER LOCAL RULE 9H IN OPPOSITION TO INTERVENING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

Come now the plaintiffs, and with respect to the affidavit of James Gilly, Jr., President of Intervening Defendant, dated September 8, 1962, file the following Supplemental Statement of Genuine Issues Under Local Rule 9(h) in opposition to Intervening Defendant's Motion for Summary Judgment:

1. In paragraph "2" of said affidavit, Mr. Gilly states that Whitney National Bank in Jefferson Parish "will have no officer or employee common with Whitney National Bank in New Orleans" other than four directors and Mr. Gilly himself, who will serve as President of Whitney-Jefferson and in a top officer capacity at Whitney-New Orleans. While this statement may be true in some respects, it conveys a false impression. The truth is that all officers and directors of both Whitney-Jefferson and Whitney-New Orleans, will, *at all times*, be subject to the common control, direction and supervision of the officers and directors of Whitney Holding Corporation, all of whom are subject to the absolute control of Whitney National Bank of New Orleans. Thus, Mr. Gilly's statement may be true as to "form", but it is patently false in reality.

2. Whitney-Jefferson has not yet been recognized as a "newly organized bank", as stated by Mr. Gilly at paragraph "2" of his affidavit (See *Whitney Exhibit 6*, attached to the affidavit). It has not yet received a charter from the Comptroller, and cannot engage in any banking business until the Comptroller issues a certificate, which he is presently enjoined from doing. Whitney-Jefferson is currently no more than an association created under the National Banking Act.

3. Plaintiffs do not agree with and oppose as untrue the statement that "Whitney-Jefferson will operate a banking house entirely separate from that of the Whitney-New Orleans" (*Gilly Affidavit*, P. 2). Whitney-New Orleans has several branches in the City of New Orleans itself which "operate in banking houses separate from the main Whitney-New Orleans". But, they are still mere branches. Plaintiffs state the same will be true of Whitney-Jefferson.

4. Plaintiffs urge the Court to recognize that, contrary to the impression sought to be conveyed in Mr. Gilly's affidavit (*Para. 4*), Whitney-Jefferson did not allegedly subscribe or pay for any stock in the Federal Reserve Bank of Atlanta until June 15, 1962, 6 full days after this action had begun and the Comptroller was withholding, subject to this suit, the issuance of any certificate to Whitney-Jefferson (See *Gilly Affidavit*, P. 14). Thus, this stock was subscribed and paid for by Whitney with full knowledge of the injunction voluntarily in effect herein.

5. Plaintiffs deny that, in effect or practice, the capital and surplus of Whitney-Jefferson and Whitney-New Orleans, totaling \$30,600,000. will be used separately to require decreased "loan limits" for the two banks, as asserted at paragraph "5" of Mr. Gilly's affidavit. On the contrary, in the same paragraph of the affidavit, Mr. Gilly admits that the two banks, subject to the common control of the Holding Corporation created by Whitney-New Orleans, will participate in loans with each other. Please see also *Plaintiffs' Exhibit "B"*, the letter of October 28, 1961 of President Berry of Whitney-New Orleans to his shareholders, where he states, at page 2:

"From the depositors' point of view, those in the smaller bank will be assured of the same management which directs the larger one. . . . They will be assured of

access to the large loan limits of the combined banks''.
(Emphasis supplied.)

6. The Court is urged to note, contrary to the overall impression sought to be conveyed by *paragraph "6"* of Mr. Gilly's affidavit, it is boldly admitted finally that

"the Whitney-Jefferson proposes to clear through the Whitney-New Orleans."

7. Contrary to the impression sought to be conveyed in *paragraph "7"* of Mr. Gilly's affidavit, Mr. Gilly fails to show that it is common for "branches" of national banks to have their own vaults. This condition is not limited to independent banks.

8. Mr. Gilly's statement in *paragraph "8"* of his affidavit is basically untrue. Each check, each piece of stationery and each form used by Whitney-New Orleans and Whitney-Jefferson will carry in bold, large letters the words:

"WHITNEY NATIONAL BANK".

Moreover, Whitney's evidence of record in this case contains proof of checks carrying both Whitney-New Orleans and Whitney-Jefferson on their face.

9. Plaintiffs deny the impression sought to be conveyed by *paragraphs "9" and "10"* of Mr. Gilly's affidavit. Plaintiffs' exhibits in support of their last brief before this Court consisted of letters from Whitney's own customers, all written on about the same date, stating that they, Whitney-New Orleans customers, looked forward to carrying their accounts at Whitney-New Orleans' "branch" to be established in Jefferson Parish. In truth and in fact, Mr. Gilly's affidavit now admits that this "normal banking practice" will be followed.

10. Plaintiffs deny, for lack of any evidence of record, that "no shareholder requested receipt of the value of his shares" as alleged in Mr. Gilly's affidavit, *paragraph 15*. What happened to the dissenting shareholders? Who bought them out? Or, did they continue to hold their shares throughout effectuation of the Whitney "plan"? These are all matters still genuinely in issue.

11. Plaintiffs urge the Court to recognize, under *para-*

graphs 16 and 17 of Mr. Gilly's affidavit of September 8, 1962, that

(a) Whitney-Jefferson did not even instruct or authorize its real estate agent to enter into a lease "for a temporary site" *until June 13, 1962, 4 days after this action was filed* and the Comptroller was withholding his certificate pending the outcome of this suit;

(b) Said lease was not executed *until June 15, 1962, 6 days after this suit was filed;*

(c) Whitney-Jefferson did not acquire "its proposed permanent site" until June 29, 1962, 20 days after this suit was filed and 2 days after Judge Hart signed the temporary restraining order herein.

The remaining allegations of paragraph 16 are self serving and argumentative.

EDWARD L. MERRIGAN,
Attorney for Plaintiffs.

Filed September 27, 1962

PLAINTIFFS' EXHIBIT "Z-1"

January 31, 1962.

The Honorable James J. Saxon,
The Comptroller of the Currency,
Washington 25, D. C.

Dear Mr. Saxon:

Reference is made to the application by Whitney Holding Corporation, New Orleans, Louisiana, for the Board's approval of the formation of a bank holding company pursuant to section 3(a)(1) of the Bank Holding Company Act. The Corporation seeks approval of its acquisition of the stock of (1) Crescent City National Bank, New Orleans, Louisiana (a proposed new bank), into which would be consolidated the existing Whitney National Bank of New Orleans, under the latter title, and (2) the Whitney National Bank in Jefferson Parish, Louisiana (a proposed new bank). Pursuant to section 3(b) of the Act, a copy of the application

was transmitted to your predecessor, Mr. Gidney, with a request for his views and recommendations. In a letter dated October 11, 1961, Mr. Gidney advised the Board, in part that "In view of the favorable conditions disclosed by this study [of the application] it is recommended that you give your approval to this application."

On January 17, 1962, there was conducted before the Board a public oral presentation of views on Whitney Holding Corporation's proposal. A copy of the stenographic transcript of this proceeding was given to Mr. Mortimer of your staff on January 22. As reflected in this transcript, statements in opposition to the application were presented by Mr. Louis J. Roussel, a stockholder in the Whitney National Bank, by Mr. Clem H. Sehrt, an attorney who represented minority shareholders of the Whitney National Bank, and by Mr. Victor J. Passera, President, The National Bank of Commerce in Jefferson Parish. Mr. Roussel and Mr. Sehrt described certain actions allegedly taken by Whitney National Bank's management, which they charged were in violation or circumvention of existing law and contrary to the rights of the Bank's shareholders (Tr. 25-50). In reply, Mr. Malcolm L. Monroe, counsel for Applicant, stated that, with the exception of

Filed September 27, 1962

EXHIBIT "Z-2"

matters relating to the charter of the proposed bank holding company, all the matters raised by Mr. Roussel "... have been fully taken up or disclosed or subject to examination by the Comptroller. The Comptroller's files have full reports. * * * And the Comptroller's examiners have been into every matter that has been discussed by him [Mr. Roussel]" (Tr. 54). Similar replies by Mr. Monroe relative to Mr. Sehrt's statements are found at pages 55-56 of the transcript.

In view of the bearing that these matters might have on the Board's decision on Whitney Holding Corporation's application, the Board would appreciate any comments that you may have relative to these statements and responses,

which appear in their entirety at pages 25 through 56 of the transcript of the oral presentation.

Very truly yours,

(Signed) MERRITT SHERMAN,
Secretary.

Approved, minutes, Jan. 31, 1962.

TJO'C:vr
1/31/62

Filed September 27, 1962

EXHIBIT "AA-1"

TREASURY DEPARTMENT
Comptroller of the Currency
Washington 25

February 27, 1962.

Board of Governors
of the Federal Reserve System,
Washington 25, D. C.

Gentlemen:

In accordance with the request contained in your letter of January 31, 1962, I have reviewed the transcript of proceedings of the oral hearing on the application for approval of the Whitney Holding Corporation which was held January 17, 1962.

For your convenience of reference, my observations will deal with the items listed at 1 to 10 in the transcript where comment appears pertinent and such further comments as deemed proper.

(1) The Whitney Holding Corporation is being organized for the purpose of establishing an affiliated bank in Jefferson Parish, Louisiana; and for the purpose of acquiring all the stock of Whitney National Bank as well as the affiliated bank. Since all of the stock of Whitney National Bank (with the exception of qualifying shares) would be owned by the holding company, the effect would be to prevent minority representation through cumulative voting.

(3) The purchase of the real estate referred to did represent a violation of law. The bank purchased a 1/24 interest

in "J. W. Pharr" property in June 1957 for \$4,500.00. 18/24 of the property was previously owned, having been acquired d. p. c. in 1933. The 1/24 interest is currently carried on the bank's books at \$1.00 and is listed in the current report of examination as a violation of Section 5137, U. S. R. S.

(4) The listing of advisory board members and directors as a group is improper and the bank has been advised to discontinue the practice.

(5) Our examiner reports that the details of the sale of the property on Veterans Highway and Jefferson Parish were spread on the minutes of the board of directors and approved by them. We have no reason to suspect improper procedure; however, the matter will be further investigated.

Filed September 27, 1962

EXHIBIT "AA-2"

(8) At the 1962 annual meeting, the shareholders of the Whitney National Bank reduced the number of directors to be elected from 20 to 7. Determination of the number of directors to be elected is a prerogative of the shareholders. The effect of the reduction was to require a larger number of shares to elect a minority director through cumulative voting.

Mr. Roussel's comments on dividends and Mr. Berry's salary reflect his desires for high dividends as opposed to the director's conservative policies. Neither Mr. Berry's salary nor the conservative dividends have been criticized by this office.

With respect to the comments on the growth of the bank and comparative figures, the Whitney National Bank is the largest bank in Louisiana and it is conservatively operated and in good condition.

Other comments with respect to the legality and merits of the holding company are matters on which a previous Comptroller of the Currency has expressed himself; therefore, further enlargement on the subject is deemed undesirable.

Should you wish further information on the matter, please advise me.

Very truly yours,

JAMES J. SAXON,
Comptroller of the Currency.

The New Frontiersman of banking

James J. Saxon takes a much broader view of the job of Comptroller of the Currency than his predecessors. He feels his office should lead banking industry



Compt. James J. Saxon, who took office in November, advocates sweeping changes in the banking industry.

For years, the Comptroller of the Currency was a little-known Treasury Dept. official whose job, in the public's mind at least, seemed to have changed little since Civil War days—that of regulating currency issued by national banks. But Compt. James J. Saxon, a dapper 48-year-old attorney and former Chicago banker, is rapidly making this image obsolete.

Multiple changes. Saxon is jolting the banking industry with proposals and actions that amount to an overhaul of its entire structure. He is studying 43 specific changes in bank regulations, ranging from the technical task of electing bank directors to the highly controversial subject of whether federal law should take precedence over state law. The latter proposal, if accepted, could open such states as Illinois and New York to statewide branch banking.

Though favoring bank expansion, Saxon has taken a strong public stand against undue concentration of banking assets. He played a key role, for example, in the defeat of such undertakings as Morgan Guaranty Trust Co.'s attempt to set up a giant \$8-billion bank holding company in New York State. Saxon also has streamlined the Comptroller's own operations by speeding the processing of mergers and the chartering of new banks.

Skirmishes. In an industry where even minor alterations win acceptance at glacial speed, Saxon's moves are sure to rouse opposition. State banking officials see his actions as a resumption of an old federal drive to break down the dual banking system that has been traditional in the U.S. They accuse him of usurping their powers by trying to shift all regulatory authority to Washington. Saxon denies this. But he's also been having trouble with federal banking men, who think he is trying to dominate the scene.

Saxon, in fact, is one of the few Administration officials bold enough to have challenged the President's younger brother, Atty. Gen. Robert F. Kennedy. Before accepting the

job, Saxon reached an understanding that the Justice Dept. would keep him informed on all actions in the banking field. But early this year, Kennedy brought antitrust suits against three New Jersey banks without forewarning Saxon. Saxon says he tried to reach Kennedy twice by phone, but then "I saw red." He promptly denounced the "zealots" in Justice. Relations between the two agencies have since improved, but they are still strained.

Disputed issues. If Saxon has his way, there will be a lot more banks with a lot more branches, more liberal lending limits, less concentration in banking, and the gradual centralization of power within the hands of the Comptroller.

In his traditional role, the Comptroller has done little more than conduct bank examinations and rule on mergers and branch applications.

Saxon, though, takes a broader view of the position. "Congress didn't create the Comptroller's job just for housekeeping," he explains. "Someone has to be the leader of the banking industry."

With this concept in mind, Saxon has projected himself into the middle of a hot dispute: how banks are to expand and who is to regulate them.

Dual control. Under present law, each state has the power to permit or restrict expansion moves by nationally or state-chartered banks—whether by branching, merger, or holding company. Thus, California allows statewide branch banking, Illinois bans it, and New York carves itself into nine districts and allows branching only within districts, except in the case of New York City and neighboring suburbs. Some states prohibit bank holding companies, while others allow them.

But state decisions can be vetoed by federal agencies. The Federal Reserve Board of Governors has the final word on state-chartered member banks and holding companies, the Federal Deposit Insurance Corp., on nonmember insured state banks. The Comptroller is given

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jurisdiction over national banks. In all cases, though, the federal agencies are obligated to stay within limits laid down by state law. Each of these agencies must check with the other before making a ruling, and opinions must also be obtained from Justice.

Obviously, there is lots of room for conflict. This week, for example, the Fed voted against a new Florida bank holding company, though Justice and Saxon had seen no objections. As Saxon sees it, the present system is a hodge-podge of antiquated, conflicting federal and state law. He argues the system inhibits, rather than encourages, economic growth by unnaturally preventing adequate bank expansion.

"We must have a maximum of flexibility within the banking industry," Saxon says. He wants banks free to choose their expansion route between mergers, direct branches, or holding companies.

Saxon's solution. The way out, in Saxon's view, is to get Congress to give the Comptroller the authority to approve mergers and branching plans of national banks without regard to state law. In effect, this would force states to liberalize their laws, or else find all their state banks converting to national charters (state banks generally have more liberal lending limits than national banks).

But Saxon does not go along with putting regulatory control into the hands of a single agency. Such an approach was advocated recently by J.L. Robertson, one of the Fed's Board of Governors, who suggested a new Federal Banking Commission.

Long list of problems. Saxon has no illusions that his plans will be accepted gracefully anytime soon—if indeed they are ever accepted. But he is approaching the task with single-minded determination.

When he arrived in Washington last November, Saxon carried his own battle plan: 24 single-spaced typewritten pages outlining what he thought was wrong with the banking system and what he intended to do about it.

Saxon's first step was to make an industrywide survey of banking problems. He then boiled these down to 43 separate issues, and appointed a group of committees to make recommendations on them.

Saxon's "43" fall into two general categories: the first he calls "corporate mechanics," which includes such topics as bank examinations, election of bank directors, bank stock dividends; the second, he refers to as "substantive issues"—these are broader concepts.

Saxon expects little trouble push-

ing through changes in mechanics, for he has the authority to make many of these changes himself. The first group will be out next month.

The "substantive issues" will take more doing. Many would require Congressional action, and state banking authorities are against a number of them. The most controversial proposal would center on making federal law take precedence over state law.

Pressures. By his own actions, Saxon already is trying to exert pressure along these lines. He opposed formation of a new bank holding company in New York State, although approved by authorities there, because he felt there would be too much banking concentration. Saxon is not against expansion in New York, but he prefers branching to the merger or bank holding company route. His argument is that adding branches one at a time is less disruptive in New York's case. By opposing Morgan Guaranty's holding company, Saxon in effect is pressuring the state into liberalizing its branching laws.

In the case of Louisiana's Whitney National Bank, Saxon is also trying to get more liberal state law. In this instance, he favors formation of a holding company that was set up specifically to skirt state rules that limit branching into parishes where a bank already exists. And he has gone to court to challenge a state law hurriedly passed to prohibit the new holding company.

Qualifications. In these and other matters, Saxon is stirring more of a fuss than any Comptroller in recent history. Some bankers regard him as an ambitious man, using his present post as a springboard for more lofty ventures. Even so, they say he is eminently qualified for his job.

Saxon's first job out of college was as an attorney in the Comptroller's office. Later he held various Treasury Dept. posts, including that of attache to Gen. Douglas MacArthur. One of his jobs was to remove several billion dollars worth of gold bullion from Corregidor before the fortress fell to the Japanese. Saxon carried it out by submarine. His last job before becoming Comptroller was as counselor for the First National Bank of Chicago.

Saxon himself admits he has made some mistakes. He regrets some incidents where he has "popped off in public." But he feels the controversies have gained his office new standing and have stimulated serious discussion of banking problems. In the long run, he says, this will make the task of "modernizing" the banking system easier. **End**



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428

Filed October 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

OPPOSITION OF DEFENDANT COMPTROLLER OF THE CURRENCY TO
CROSS-MOTION OF INTERVENING PLAINTIFF J. W. JEANSONNE
FOR SUMMARY JUDGMENT.

Comes now the defendant Comptroller of the Currency, by his undersigned counsel, and opposes the cross-motion of intervening plaintiff J. W. Jeansonne for summary judgment herein on the ground that said intervening plaintiff is not entitled to judgment as a matter of law. The pending motions of the defendant and the intervening defendant should be granted and all pending motions of the plaintiffs and the intervening plaintiffs should be denied.

JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

DONALD B. MACGUINEAS,
DAVID V. SEAMAN,
*Attorneys, Department of Justice
Attorneys for Defendant,
Comptroller of the Currency.*

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed October 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

STATEMENT OF DEFENDANT COMPTROLLER OF THE CURRENCY
IN RESPONSE TO THE STATEMENT OF FACTS SUPPORTING THE
CROSS-MOTION OF INTERVENING PLAINTIFF J. W. JEANSONNE
FOR SUMMARY JUDGMENT.

The cross-motion of intervening plaintiff J. W. Jeansonne for summary judgment, filed herein on September 26, 1962, does not include the statement required by Local Civil Rule 9(h). However, the following is stated in an untitled paper attached to the motion: "Intervening Plaintiff adopts in support of his Motion for Summary Judgment the list of exhibits filed on behalf of Plaintiffs." For present purposes, therefore, we assume that intervening plaintiff intends to adopt as his own the statement of material facts accompanying plaintiffs' cross-motion for summary judgment, filed on July 24, 1962.

Accordingly, we adopt by reference our response thereto, filed on August 10, 1962.

JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

DONALD B. MACGUINEAS,
DAVID V. SEAMAN,
*Attorneys, Department of Justice
Attorneys for Defendant,
Comptroller of the Currency.*

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed November 16, 1962

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT

Civil Action No. 1857-62

OFFICIAL TRANSCRIPT OF PROCEEDINGS

October 11, 1962.

MOTIONS & CROSS-MOTIONS FOR SUMMARY JUDGMENT AND
MOTION TO DISMISS

[9] The Court will ask counsel on both sides to respond to the question of the Court as to whether there is any substantial question of fact involved in this case, or whether it is fully agreed by all that the question to be presented to the Court is strictly a question of law.

We all know if there is any substantial question of fact that is a bar to the Court proceeding in a motion for summary judgment.

Mr. Merrigan: We have filed in the case, as you probably know, Your Honor, statements under Rule 9(h) regarding certain differences we have with the facts relied upon by the intervening defendant for summary judgment.

The Court: Do you mean your construction of the legal effect of those facts?

Mr. Merrigan: Well, the legal effect and the facts as they are presented by the intervening defendant. I don't think there is any difference of fact at all between the plaintiffs and the defendant Comptroller, but I would be less than candid with the Court if I told you we didn't disagree most heartily with some of the material facts the intervening defendant has presented to the Court. In other words, they have made certain statements in their Rule 9(h), statement of material issues, material facts which are supposed to be without issue, which we do disagree with, and we have set them [10] out very specifically in our statement of disagreement.

Mr. Acheson: Your Honor, I would say as to that, there is no disagreement as to the facts between the intervening defendant and the plaintiffs, if by fact we mean an event,

something which occurred and can be reported; if we mean a conclusion which is drawn from that, there are different conclusions. These I submit and we have submitted in papers filed with Your Honor are mere conclusions of law, or conclusions to be drawn from undisputed facts. There are no facts as such which are in dispute. This is my assertion to Your Honor.

If Your Honor will glance through our reply to the paper filed by my learned opponent you will see in all respects I think except one these are really conclusions of law.

The one is a typographical error in which he states quite correctly that one of our papers cites a certain date and this is incorrect. That is quite true. We have made a correction of the error and aside from that I know of no event, no specific occasion, nothing which was done upon which there is any difference between us.

The Court: Can the Court properly construe the explanation of counsel for plaintiff as coinciding with the statement of counsel for defendant?

Mr. Merrigan: I would have to say again, and I have in mind most particularly the intervening defendant's contention [11] that the \$650,000 payment which was drawn out of the funds of the Whitney National Bank of New Orleans transferred to the Holding Corporation and then put in the Whitney National Bank in Jefferson Parish was a dividend.

We say that this was a withdrawal of capital funds. It goes right to the heart of the case. We say we cannot agree it was a dividend. I think that is the major issue which I take issue with.

I also take issue with the fact that the two banks, the Bank in New Orleans and the bank in Jefferson Parish, are not going to be run by the same management because the Holding Corporation consists of the same officers and directors as those who manage the New Orleans bank, and they manage the Jefferson Bank.

These are issues which go right to the heart of this case.

Mr. Acheson: Your Honor, this is exactly what I was undertaking to state to Your Honor a moment ago. Whether a sum of money paid by one institution to its parent company is a dividend or not is a matter of law. There is no doubt about the fact and my learned opponent will not disagree with me that the money was paid as stated, that it purported to be a dividend, and that it went through all the motions of a dividend.

[12] Now, whether Your Honor will conclude, if it is relevant, which I think it is not, whether it was a dividend or not or some other kind of a payment, this is a conclusion to be drawn from the facts. There is no fact which a trial could change here as to whether it was or was not a dividend.

We all know what happened. We do not disagree about what happened. We disagree only about the name which is given to it and the significance of what was done.

The Court: The passage of this sum of money counsel for the plaintiff stated is an agreed fact. You are not disputing that this money passed. The question is as to the legal effect.

Mr. Merrigan: It goes a little deeper than that, Your Honor, because we submit, and our Rule 9(h), disagreement statement, that on the basis of the testimony of Mr. Keehn Berry himself, who is the president of the Whitney National Bank of New Orleans, sworn testimony, he said it was to be a withdrawal of capital funds and in this case we are going to contend that it was a withdrawal of capital funds and it is not in the manner of calling it a dividend or anything else.

The admitted facts, the statement of the defendant, the intervening defendant, are to the effect that it was a capital withdrawal. It came out of their undivided surplus account.

[13] Mr. Acheson: Your Honor, I think my distinguished friend here has settled the matter by what he just said. He said in fact it came out of the undivided profits account. It did. This is not a withdrawal of capital. This is a dividend. There is no dispute.

Mr. Merrigan: Of course, my very distinguished opponent will agree that undivided surplus of a bank is its capital account.

Mr. Acheson: Capital account is its capital account. Its undivided profit is its account out of which dividends are paid.

This is a matter which Your Honor can decide. You need no further testimony.

Mr. Merrigan: Indeed, that is so, but we say it is an issue.

Mr. Acheson: Surely it is an issue, but it is a conclusion and not a fact.

The Court: The Court is not quite persuaded it is an issue of fact. It seems to be an issue which is founded upon agreed statement of fact, and that would cause it, in the Court's humble judgment, to be an issue of law, if it is material.

Mr. Merrigan: I would agree with Your Honor if we can simply take the facts as Mr. Acheson has agreed they are: that it did come out of the surplus account and was transferred [14] from the Whitney National of New Orleans to the Holding Company and then directly to the bank in Jefferson.

Mr. Acheson: It came out of the undivided profits of the bank, surely.

The Court: Are there any other matters that might raise questions at this time?

The Court hears no affirmative response. The Court assumes it can proceed on the basis that there is no question of fact that would prevent motions for summary judgment from being heard.

Consequently, we will proceed and the Court understands it is agreed between counsel on both sides that counsel for the plaintiff, who is also one of the movants for a motion for summary judgment, is to make the opening argument. Is that correct?

Mr. Merrigan: Yes, Your Honor.

The Court: You may proceed, Mr. Merrigan.

* * * * *

Filed November 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MEMORANDUM

On October 3, 1961, the Comptroller of the Currency gave preliminary approval to the formation of two new national banks, the Crescent City National Bank and the Whitney National Bank in Jefferson Parish, Louisiana, subject to approval by the Federal Reserve Board of the formation of a holding company for the purpose of acquiring the stock of such banks, pursuant to the Bank Holding Company Act of 1956. On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of the above two mentioned banks. Subsequently, the Comptroller approved the consolidation of the existing Whitney National Bank in New Orleans into the Crescent City National Bank under the name of the Whitney National Bank in New Orleans and this was accomplished. The Holding Corporation, previously organized under Louisiana law, then completed the organization of the Whitney National Bank in Jefferson Parish by purchasing all of its stock for \$650,000.00. At that time the Articles of Association and the Certificate of Organization of the Whitney National Bank in Jefferson Parish had already been executed and filed with the Comptroller. On June 9, 1962, just as the Comptroller was about to issue a Certificate of Authority to permit that Bank to commence business this suit was instituted praying for a declaratory judgment and an injunction prohibiting him from issuing said certificate.

A temporary restraining order was issued by this Court on June 27, 1962, followed by a temporary injunction which took effect on the same day on which the Louisiana State Legislature passed a statute making it unlawful "... for any bank holding company or subsidiary thereof to open for business whether or not the charter, permit, license or

certificate to open for business has already been issued." La. Act 275 3(5) of 1962. The Plaintiffs base their case on the contention that this statute is clearly applicable to the Whitney National Bank in Jefferson Parish and that the Defendant Comptroller may not issue a certificate of Authority to this bank in contravention of the law. While continuing this contention, the Plaintiffs urge the alternative contention that, apart from the above statute, the formation of this bank contravenes Section 36(c) of the National Banking Act, 12 U.S.C. 36(c), in combination with La. R.S. 6:45 which makes it unlawful for the Whitney National Bank in New Orleans to open a "branch" in Jefferson Parish, the Plaintiffs urging the Court to arrive at this determination by "piercing the corporate veil" of the holding company form used.

The Defendants, on the other hand, argue that Louisiana Act 275 is inapplicable to it, a national bank, but that, should the Court determine that it is applicable to the new bank, then it is unconstitutional in that it collides with the Supremacy Clause of the Constitution since it prohibits a national bank, which has been organized in compliance with the terms of the Federal Bank Holding Company Act of 1956 from commencing business in the State of Louisiana and thus is in excess of the regulatory power reserved to the states. The Defendants contend that the Whitney National Bank in Jefferson Parish is not a "branch" bank and therefore does not come within the proscription of Section 36(c) of the National Banking Act but is, on the contrary, an entity possessing the degree of separateness required by the terms of the Federal Bank Holding Company Act.

This matter is now before the Court on (1) the motion of Defendant Saxon, Comptroller of the Currency, for summary judgment; (2) the cross-motion of Plaintiff, Bank of New Orleans, for summary judgment; (3) the cross-motion of Defendant Saxon to dismiss; (4) the motion of the Intervening Defendant, Whitney National Bank in Jefferson Parish, for summary judgment; (5) the cross-motion of the Intervening Plaintiff, J. W. Jeansonne, Louisiana Bank Commissioner, for summary judgment. Upon consideration of these motions, the Points and Authorities submitted therewith, the Statements of Opposition filed thereto and the arguments advanced on hearing, and the Court being fully advised in the premises, the Court concludes, there being no genuine issue of material fact, as follows:

That the cross-motions for summary judgment raised by the Plaintiff, Bank of New Orleans and the Intervening Plaintiff, J. W. Jeansonne, State Bank Commissioner of the State of Louisiana, should be, and are, granted. Accordingly, the motions for summary judgment of the Defendant, James J. Saxon, Comptroller of the Currency and the Intervening Defendant, Whitney National Bank in Jefferson Parish are denied. Further, Defendant Saxon's cross-motion to dismiss is also denied.

The Certificate of Authority has not yet been issued by the Comptroller of the Currency to the Whitney National Bank in Jefferson Parish and there is no question that the Comptroller has no discretion to issue a certificate of authority to a new bank that will operate in a manner prohibited by law. *Commercial State Bank v. Gidney*, 174 F. Supp. 770, 778, aff'd, 278 F.2d 871 (D.C. App. 1960); *Camden Trust Co. v. Gidney*, 301 F.2d 521 (D.C. App.), cert. denied, 369 U.S. 886 (1962). Louisiana Act 275 3(5) of 1962 reads as follows: "It shall be unlawful . . . for any bank holding company or subsidiary thereof to open for business whether or not the charter, permit, license or certificate to open for business has already been issued." The Court rules that this statute is directly applicable to the proposed Defendant, Whitney National Bank in Jefferson Parish and that said statute makes it unlawful for said bank to commence business. Relying on the authority of *Braeburn Securities Corp. v. Smith*, 153 N.E. 2d 806, appeal dismissed for want of substantial Federal question, 359 U.S. 311 (1959) and *Opinion of the Justices*, 151 A. 2d 236 (N.H. 1959) upholding the constitutionality of similar state statutes, the Court rules that the passage of Louisiana Act 275 3(5) of 1962 was within the power reserved to the states under 12 U.S.C. Section 1846, the Federal Bank Holding Company Act.

The Court finds §1842(d) of said act persuasive of the degree of control that the states may bring to bear in this area. This Section essentially provides that, before an out-of-state bank holding company may come into another state and acquire an interest in a bank of that state, the state must specifically authorize it by statute. The cases relied on by the Defendants in support of their contention that this statute is unconstitutional do not concern themselves with the question of the permissible limits of state regulation of

national bank holding companies and their subsidiaries under §1846.

The Court having upheld the constitutionality of Louisiana Act 275 in its application to Defendant making it unlawful for said Defendant to open in Louisiana, the Court deems it unnecessary to address itself to the cogent arguments put forth by counsel on the question of the applicability of 12 U.S.C. 36(c) as to whether, by its terms, it proscribes in these circumstances, the setting up of the type of bank herein involved and secondly, if not proscribed by the terms of the statute, whether this Court ought to look behind the corporate form of the new bank to determine whether or not it is in violation of Section 36(c).

Counsel for the Plaintiff, Bank of New Orleans and Trust Company will prepare and submit findings of fact, conclusions of law and order in conformity with the Court's ruling.

/signed/ CHARLES F. McLAUGHLIN,
Judge.

November 5, 1962.

Filed November 23, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

INTERVENING DEFENDANT'S OBJECTIONS TO THE FORM OF
PLAINTIFFS' PROPOSED ORDER FOR SUMMARY JUDGMENT AND
JUDGMENT.

Comes now the intervening defendant, Whitney National Bank in Jefferson Parish, and objects to the form of plaintiffs' Proposed Order for Summary Judgment and Judgment, submitted herein on November 21, 1962, and requests this Court to amend said Proposed Order for Summary Judgment and Judgment in the following respects:

1. The last paragraph beginning on page 2 of said Proposed Order for Summary Judgment and Judgment should be revised to read as follows:

"Ordered, Adjudged and Decreed, that defendant, James J. Saxon, Comptroller of the Currency, his agents, servants, employees and attorneys, be and they hereby are permanently restrained and enjoined from issuing or delivering any Certificate of Authority, pursuant to 12 U.S.C. §27 or otherwise, to intervening defendant Whitney National Bank in Jefferson Parish, so long as Whitney National Bank in Jefferson Parish remains a bank holding company subsidiary within the meaning of Louisiana Act 275 of 1962, or to any persons or corporations in active concert or participation with said Whitney National Bank in Jefferson Parish, authorizing the opening and operation by them or any of them of a bank or banking facilities within the limits of Jefferson Parish, State of Louisiana, in violation of Louisiana Act 275 of 1962, and it is further"

2. The first full paragraph on page 3 of said Order for Summary Judgment and Judgment should be stricken.

/s/ BRICE M. CLAGETT,
*Attorney for Intervening Defendant
Whitney National Bank in
Jefferson Parish*

November 23, 1962.

Filed November 23, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

MEMORANDUM IN SUPPORT OF INTERVENING DEFENDANT'S OB-
JECTIONS TO THE FORM OF PLAINTIFFS' PROPOSED ORDER FOR
SUMMARY JUDGMENT AND JUDGMENT.

1. The Injunction Provision Is Unjustifiably Broad and Must Be Amended To Conform to the Court's Decision As Contained in Its Memorandum Opinion Filed November 5, 1962.

The proposed Order, as drafted by plaintiffs, would seem to prohibit the Comptroller from granting a certificate to Whitney National Bank in Jefferson Parish even in a situation in which the opening of that bank for business would be perfectly legal under Louisiana law. The proposed Order thus goes far beyond the decision of the Court, as stated in its Memorandum Opinion filed November 5, 1962, and must be revised to conform to that decision.

The Court has held that the Comptroller may not grant a certificate to commence a banking business to Whitney National Bank in Jefferson Parish on the ground that Whitney-Jefferson could not commence a banking business in Jefferson Parish, Louisiana, without violating Louisiana Act 275 of 1962. Section 3(5) of that statute provides that "no bank holding company or subsidiary thereof" may open for business any bank not already open for business on the effective date of the statute. Whitney-Jefferson is presently a bank holding company subsidiary within the meaning of Section 1(g) of the statute.

If, however, the ownership of Whitney-Jefferson changed so that it ceased to be a bank holding company subsidiary as that term is used in the Louisiana statute, the prohibition against its opening would no longer apply and so far as has been decided by this Court, Whitney-Jefferson would be free to open for business and the Comptroller would be free to issue his certificate. Any claim that Whitney-Jefferson

would still be prohibited from opening for business even after it ceased to be a bank holding company subsidiary would represent an attempt to extend the decision of this Court to matters which it has expressly refrained from deciding.

The proposed injunction paragraph, beginning at the bottom of page 2 of plaintiffs' proposed Order, is inconsistent with these obvious facts. Read literally, that paragraph would appear to enjoin the Comptroller from issuing his certificate to Whitney-Jefferson *even if Whitney-Jefferson ceased to be a bank holding company subsidiary*. Read literally, therefore, this paragraph would seem to enjoin the Comptroller from chartering Whitney-Jefferson even if Whitney-Jefferson's ownership had changed so that its opening was no longer illegal under the Louisiana statute. The injunction paragraph is therefore indefensibly broad and inconsistent with the decision of the Court as contained in its Memorandum Opinion filed on November 5, 1962.

The defect can be cured by revising plaintiffs' Proposed Order and Judgment as shown in paragraph 1 of intervening defendant's Objections, filed herein on November 23, 1962. Intervening defendant's proposed revisions ensure that (1) the Comptroller is enjoined from issuing a certificate to Whitney-Jefferson so long as Whitney-Jefferson remains a bank holding company subsidiary within the meaning of the Louisiana statute, and (2) the Comptroller is enjoined from issuing a certificate to persons or corporations "in active concert or participation with" Whitney-Jefferson if the opening of a bank by them in Jefferson Parish would violate the Louisiana statute.

2. Plaintiffs Are Not Entitled to the Cancellation of Their Bond, and Such Bond Should Be Retained To Secure Intervening Defendant Against Damages Incurred by It in the Event That It is Ultimately Determined That Plaintiffs Acted Wrongfully in Obtaining a Preliminary Injunction.

The first full paragraph on page 3 of plaintiffs' Proposed Order for Summary Judgment and Judgment provides for cancellation of the \$50,000 bond filed herein by one of the plaintiffs, as principal, and Glens Falls Insurance Company, surety, on July 16, 1962. This provision of the proposed Order is unjustified and should be stricken.

Fed. R. Civ. P. 65(c), which provides for the giving of a bond by a party seeking a preliminary injunction, does not provide for its automatic or necessary cancellation in the event that a permanent injunction is subsequently granted. If it is determined on appeal that the preliminary injunction was wrongfully granted and that intervening defendant has suffered damage thereby, then intervening defendant would become entitled to collect on the bond to the extent of such damages. This was precisely the situation in *Houghton v. Meyer*, 208 U.S. 149 (1908), where the Supreme Court ruled in favor of the position here taken, and allowed a party which had lost at trial, but had won on appeal, to collect damages on a preliminary injunction bond.

The arguments for maintaining the bond in effect are unusually strong in the present case, where (1) substantial questions of law will be determined on appeal, and (2) the Louisiana statute which this Court has held determinative of the litigation had not even been enacted at the time the preliminary injunction (on which the bond was given) was entered.

Other authorities support the position here taken. "Until there has been a final determination of the suit in which the bond is given, it cannot be definitely ascertained as to whether or not there is or will be any liability on the bond." 14 R.C.L. 74-75. If a plaintiff obtains a preliminary injunction and gives security, and subsequently obtains a permanent injunction or other judgment, but judgment for the plaintiff is reversed on appeal, the defendant is entitled to collect on the bond. *Beech v. United States Fidelity & Guaranty Co.*, 30 P.2d 1079 (Idaho, 1934); *Williams v. Baker*, 13 Ohio C.C. 500, 92 A.L.R. 274 (1896).

The penultimate paragraph of plaintiffs' Proposed Order for Summary Judgment and Judgment should therefore be deleted.

Respectfully submitted,

/s/ BRICE M. CLAGETT,
Attorney for intervening defendant
Whitney National Bank in Jefferson Parish.

November 23, 1962.

Filed November 26, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

DEFENDANT COMPTROLLER'S OBJECTIONS TO FORM OF PROPOSED
ORDER FOR SUMMARY JUDGMENT AND JUDGMENT AS SUB-
MITTED BY PLAINTIFFS.

On November 21, 1962, plaintiffs submitted a proposed "Order for Summary Judgment and Judgment" for the Court's consideration in this case.

The defendant Comptroller objects to the form of the fifth paragraph of that proposed order (set forth at the bottom of page 2 and at the top of page 3 as submitted by plaintiffs), and proposes that said paragraph be amended to read as follows (new matter being underlined):

"Ordered, adjudged and decreed, that defendant, James J. Saxon, Comptroller of the Currency, his agents, servants, employees and attorneys, be and they hereby are permanently restrained and enjoined from issuing or delivering any Certificate of Authority, pursuant to 12 U.S.C. §27 or otherwise, to intervening defendant Whitney National Bank in Jefferson Parish, *so long as Whitney National Bank in Jefferson Parish remains a bank holding company subsidiary within the meaning of Louisiana Act 275 of 1962*, or to any persons or corporations in active concert or participation with said Whitney National Bank in Jefferson Parish, authorizing the opening and operation by them or any of them of a bank or banking facilities within the limits of Jefferson Parish, State of Louisiana, *in violation of Louisiana Act 275 of 1962*, and it is further"

The defendant Comptroller takes no position with respect to inclusion or exclusion of the sixth paragraph of the proposed order (set forth as the first full paragraph on page 3 as submitted by plaintiffs), dealing with cancellation of the

injunction undertaking and discharge of the principal and surety from further liability thereon.

JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

DONALD B. MACGUINEAS,
PAUL J. GROMBLY,
DAVID V. SEAMAN,
Attorneys, Department of Justice
Attorneys for Defendant
Comptroller of the Currency.

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

Filed December 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF
DECLARATORY JUDGMENT AND PERMANENT INJUNCTION.

This is an action by the Bank of New Orleans and Trust Company and Guaranty Bank and Trust Company, Lafayette, Louisiana against James J. Saxon, Comptroller of the Currency, seeking a Declaratory Judgment and an Injunction prohibiting the defendant from issuing to the Whitney National Bank in Jefferson Parish a Certificate of Authority to commence the business of banking in Jefferson Parish, Louisiana. A temporary restraining order was issued by this Court on June 27, 1962. Thereafter, the motion of the Whitney National Bank in Jefferson Parish to intervene as a defendant, which had been filed on June 19, 1962 was granted, and the Bank of Louisiana in New Orleans intervened as a plaintiff. On July 10, 1962, the Court issued a Preliminary Injunction against the defendant. J. W. Jean-sonne, Louisiana State Bank Commissioner, thereupon intervened as a plaintiff.

Motions and cross-motions for Summary Judgment by all parties and defendant Comptroller's motion to dismiss having come on for hearing on October 10, 1962, and the Court having considered the pleadings herein, the statements of material facts submitted by the parties, the points and authorities submitted therewith, the affidavits submitted by the parties, and having heard oral arguments of counsel, and the Court, having concluded that there are no genuine issues of fact involved in this case requiring a trial on the merits and that plaintiffs' and intervening plaintiffs' cross-motions for summary judgment should be granted for the reasons set forth in the Court's Memorandum Decision, dated November 5, 1962, hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiffs, Bank of New Orleans and Trust Company and Guaranty Bank and Trust Company, Lafayette, Louisiana, and intervening plaintiff, Bank of Louisiana in New Orleans, are banking corporations organized and existing under the laws of the State of Louisiana. Plaintiffs, Bank of New Orleans and Trust Company and Bank of Louisiana in New Orleans, conduct their banking business within the Parish of Orleans, Louisiana. Plaintiff, Guaranty Bank and Trust Company of Lafayette, Louisiana conducts its banking business in the Parish of Lafayette, Louisiana.

2. J. W. Jeansonne, Louisiana State Bank Commissioner, intervening plaintiff, is the officer charged with the administration of the banking laws of the State of Louisiana, including Louisiana Act 275 of 1962.

3. Defendant, James J. Saxon, is the Comptroller of the Currency, an officer of the United States authorized by law to issue Certificates of Authority to national banking associations which are lawfully entitled to commence the business of banking.

4. Intervening defendant, Whitney National Bank in Jefferson Parish (Whitney-Jefferson), is a national banking association and a wholly owned subsidiary of Whitney Holding Corporation (Whitney Holding), a bank holding company incorporated under the laws of Louisiana.

5. Whitney National Bank of New Orleans (Whitney-New Orleans), not a party to this suit, is also a national banking

association and a wholly owned subsidiary of Whitney Holding.

6. Whitney-New Orleans, created approximately 79 years ago, is the largest bank in Louisiana and one of the largest financial institutions in the southern portion of the United States, and presently conducts its business only in Orleans Parish (a political subdivision coterminous with the City of New Orleans).

7. For a long period of years, Whitney-New Orleans has been desirous of expanding its banking operations into Jefferson Parish, Louisiana, a neighboring parish or county, but was prohibited by the operation of 12 U.S.C. §36(c) and Louisiana Revised Statutes, Title 6, §54, from establishing branch facilities outside of Orleans Parish. In an effort to accomplish its desired objective, Whitney-New Orleans decided to utilize the device of a bank holding company.

8. The management of Whitney-New Orleans thereupon obtained from the Comptroller of the Currency informal approval of its desire to expand banking operations into Jefferson Parish through the formation of a bank holding company and set into motion the following proposed steps designed to accomplish such purpose:

First: With \$350,000. of its funds, Whitney-New Orleans created Whitney Holding, and distributed the 5,600 shares it received in Whitney Holding to its stockholders.

Second: Whitney Holding invested the \$350,000. provided by Whitney-New Orleans in a new national banking association, Crescent City National Bank, and received in return all of the shares of stock in Crescent City National Bank.

Third: Whitney-New Orleans, Crescent City National Bank and Whitney Holding then entered into an agreement whereby Whitney-New Orleans was consolidated into Crescent City National Bank under the name Whitney-New Orleans, and Whitney Holding became the owner of all of the shares in the consolidated banks and the stockholders of the original Whitney-New Orleans received the remainder of the stock in Whitney Holding.

Fourth: Whitney-New Orleans then provided \$650,000. to Whitney Holding with which to purchase all of the stock in Whitney-Jefferson.

9. On October 3, 1961, defendant Comptroller gave preliminary approval to the formation of the Crescent City National Bank and the Whitney National Bank in Jefferson

Parish, Louisiana, subject to approval by the Federal Reserve Board of the application of Whitney Holding to become a bank holding company under the Bank Holding Company Act of 1956.

10. On May 3, 1962, the Federal Reserve Board approved the application of Whitney Holding.

11. Subsequently, defendant Comptroller then approved the consolidation of the existing Whitney-New Orleans into the Crescent City National Bank under the original name of Whitney-New Orleans, and this was accomplished.

12. Whitney Holding thereupon purchased all of the stock of Whitney-Jefferson for \$650,000., by which time the Articles of Association and the Certificate of Organization of Whitney-Jefferson had been executed and filed with defendant Comptroller.

13. On June 9, 1962, before defendant Comptroller could issue a Certificate of Authority authorizing Whitney-Jefferson to commence the business of banking in Jefferson Parish, Louisiana, this suit was instituted.

14. Defendant Comptroller voluntarily withheld issuance of a Certificate of Authority until June 27, 1962, when a temporary restraining order was issued by this Court. After hearing, a preliminary injunction was ordered granted on July 6, 1962, and was signed and filed on July 10, 1962.

15. On the same date, July 10, 1962, Louisiana Act 275 of 1962 became effective as the law of Louisiana. Section 3(5) of said Act provides:

"It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not a charter, permit, license or certificate to open for business has already been issued."

16. Plaintiffs and intervening plaintiffs contend that Act 275 of 1962 is clearly applicable to Whitney-Jefferson; was enacted pursuant to the power reserved to the states under 12 U.S.C. §1846 (the Federal Bank Holding Company Act); and that defendant Comptroller may not issue a Certificate of Authority to a wholly owned subsidiary of a bank holding company in contravention of this statute. Defendant and intervening defendant, on the other hand, contend that Section 3(5) of Act 275 of 1962 is inapplicable to Whitney-Jefferson; but, that, should the Court determine that such

section be applicable to Whitney-Jefferson, then it is unconstitutional in that it collides with the Supremacy Clause of the Constitution, in that said Section 3(5) of the Louisiana statute exceeds the power reserved to the states in the Federal Bank Holding Company Act.

17. Plaintiffs and intervening plaintiffs urge the alternative contention that, apart from the above statute, the issuance by defendant Comptroller of the Certificate of Authority to Whitney-Jefferson would also be in contravention of Section 36(c) of the National Banking Act, 12 U.S.C. §36(c) in combination with Louisiana R.S. 6:54, which makes it unlawful for Whitney-New Orleans to open a "branch" in Jefferson Parish, and plaintiffs and intervening plaintiffs ask the Court to arrive at this determination by "piercing the corporate veil" of the holding company form used. Defendant and intervening defendant, on the other hand, argue that Whitney-Jefferson is not a "branch" bank and therefore does not come within the proscription of Section 36(c) of the National Banking Act, but is, on the contrary, a separate entity which has been organized and established and will operate differently than a branch of Whitney-New Orleans.

18. Plaintiffs and intervening plaintiffs have presented sworn, uncontroverted facts to show that, if defendant Comptroller is not prohibited from issuing his Certificate of Authority to Whitney-Jefferson, each plaintiff bank will sustain irreparable injury and damage in excess of \$10,000., exclusive of interest and costs.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this action under 28 U.S.C. §1331, and under the provisions of Sections 11-305, 306 of the District of Columbia Code, and is empowered to render a declaratory judgment herein under the provisions of 28 U.S.C. §2201.

2. Defendant Comptroller of the Currency has no discretion to issue a Certificate of Authority to a national banking association to commence a banking business in a manner prohibited by law (*Commercial State Bank v. Gidney*, 174 F. Supp. 770, 778, affd. 278 F. 2d 871 (D.C. App. 1960); *Camden Trust Co. v. Gidney*, 301 F. 2d 521 (D.C. App.), cert. denied. 369 U.S. 886 (1962); *Wayne Oakland Bank v. Gidney*, 252 F. 2d 537 (C.C.A. 6), cert. denied 358 U.S. 830 (1958)).

3. The Federal Bank Holding Company Act, at 12 U.S.C. §1846, reserved to the States such powers and jurisdiction as they had or might exercise in the future with respect to banks, bank holding companies and subsidiaries of bank holding companies, and Section 3(5) of Louisiana Act 275 of 1962 was enacted pursuant to and within the scope of the said powers and jurisdiction so reserved to the States by Congress, and said statute is constitutional (*Braeburn Securities Corp. v. Smith*, 153 N.E. 2d 806, appeal dismissed for want of a substantial Federal question, 359 U.S. 311 (1959); *Opinion of the Justices*, 151 A. 2d 236 (N.H., 1959); also 12 U.S.C. §1842(d), *Federal Bank Holding Company Act*)).

4. Act 275 of 1962 is directly applicable to intervening defendant, Whitney National Bank in Jefferson Parish, a wholly owned subsidiary of a Louisiana-incorporated bank holding company, and said statute makes it unlawful for said intervening defendant to commence the business of banking in Louisiana. Accordingly, defendant Comptroller of the Currency should be permanently enjoined and restrained from issuing a Certificate of Authority licensing Whitney-Jefferson to commence such unlawful operations (*Commercial State Bank v. Gidney, supra*; *Wayne Oakland Bank v. Gidney, supra*).

5. Plaintiff and intervening plaintiff banks, faced with proposed invasion of property rights and injury from the proposed unlawful issuance by defendant Comptroller of a Certificate of Authority to intervening defendant Whitney-Jefferson, have standing to bring this suit, and they have no other adequate remedy at law (*Wisconsin Bankers Association v. Robertson*, 190 F. Supp. 90, 94, *affd.* 294 F. 2d 714 (App. D.C.), *cert. denied* 368 U.S. 938, *rehearing denied* 368 U.S. 979 (1961); *Commercial State Bank v. Gidney, supra*; *Wayne Oakland Bank v. Gidney, supra*.)

6. The Court, having upheld the constitutionality of Louisiana Act 275 of 1962 in its application to intervening defendant making it unlawful for said defendant to open for business in Louisiana, it is unnecessary for the Court to address itself to the other contentions of the parties on the question of the applicability of 12 U.S.C. 36(c), and as to whether, by its terms, it proscribes in these circumstances, the setting up of the type of bank here involved, and secondly, if not proscribed by the terms of the statute, whether this Court ought to look behind the corporate form of

Whitney-Jefferson to determine whether or not it is in violation of Section 36(c).

7. The cross motions for summary judgment of plaintiffs and intervening plaintiff should be and are granted; and the motions for summary judgment of the defendant and intervening defendant and the cross motion to dismiss by defendant Comptroller should be, and are, denied.

Done this 5 day of December, 1962.

/s/ CHARLES F. McLAUGHLIN,
Judge.

Filed December 5, 1962

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

ORDER

This cause came on to be heard on motions of the defendant and intervening defendant for summary judgment and cross-motions of plaintiffs and intervening plaintiffs for summary judgment, all filed pursuant to Rule 56 of the Federal Rules of Civil Procedure, and upon defendant's motion to dismiss, and the Court having considered the pleadings, the affidavits submitted in support of the motions and cross-motions, the statements of material facts submitted by the parties pursuant to Local Rule 9(h), and having heard oral arguments of counsel, and the Court, having concluded there are no genuine issues of fact involved in this case requiring a trial on the merits, and, it appearing to the Court after due deliberation that the plaintiffs' and intervening plaintiffs' cross-motions for summary judgment should be granted for the reasons set forth in the Court's Memorandum Opinion, dated November 5, 1962, and that it would be unlawful for defendant Comptroller of the Currency to issue a Certificate of Authority authorizing intervening defendant Whitney National Bank in Jefferson Parish to open and operate proposed banking facilities in Jefferson Parish, State of Louisiana to the irreparable injury and damage of the

plaintiffs and intervening plaintiffs herein, and that defendant should be permanently enjoined from so doing, and the Court having made and filed its findings of fact and conclusions of law, it is this — day of December, 1962:

Ordered, That defendant's and intervening defendant's motions for summary judgment and defendant's motion to dismiss be, and the same hereby, are denied, and it is further

Ordered, That plaintiffs' and intervening plaintiffs' cross-motions for summary judgment be, and the same hereby, are granted, and it is further

Ordered, Declared, Adjudged and Decreed, That defendant Comptroller of the Currency has no discretion to and may not issue a Certificate of Authority to intervening defendant Whitney National Bank in Jefferson Parish licensing and authorizing said intervening defendant to open and operate a banking business in Jefferson Parish, State of Louisiana, in violation of Louisiana Act 275 of 1962, the enactment of which by the State of Louisiana was authorized by the Federal Bank Holding Company Act, 12 U.S.C. §1846, and it is further

Ordered, Adjudged and Decreed, That defendant, James J. Saxon, Comptroller of the Currency, his agents, servants, employees and attorneys, be and they hereby are permanently restrained and enjoined from issuing or delivering any Certificate of Authority, pursuant to 12 U.S.C. §27 or otherwise, to intervening defendant Whitney National Bank in Jefferson Parish as a bank holding company subsidiary within the meaning of Louisiana Act 275 of 1962, or to any persons or corporations in active concert or participation with said Whitney National Bank in Jefferson Parish, authorizing the opening and operation by them or any of them of a bank or banking facilities within the limits of Jefferson Parish, State of Louisiana in violation of Louisiana Act 275 of 1962, and it is further

Ordered, Adjudged and Decreed, That the injunction undertaking in the sum of \$50,000. filed herein on July 16, 1962 in support of the preliminary injunction by plaintiff, Bank of New Orleans and Trust Company, principal, and Glens Falls Insurance Company, surety, be and the same hereby is cancelled and said principal and surety on such bond be and the same hereby are discharged of any further liability thereon, and it is further

Ordered, Adjudged and Decreed, That plaintiffs and in-

tervening plaintiffs shall have and recover their costs from the intervening defendant herein.

/s/ CHARLES F. McLAUGHLIN,
Judge.

Filed January 31, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 1857-62

[Title omitted]

NOTICE OF APPEAL

Notice is hereby given that Whitney National Bank in Jefferson Parish, the intervening defendant above named, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the order entered in this action on December 5, 1962, denying defendant's and intervening defendant's motions for summary judgment and defendant's motion to dismiss, granting plaintiff's and intervening plaintiff's cross-motions for summary judgment, ordering that defendant Comptroller of the Currency may not issue a certificate of authority to intervening defendant, permanently enjoining such issuance, discharging an undertaking and awarding costs.

/s/ W. GRAHAM CLAYTOR, JR.
Attorney for Appellant
Whitney National Bank in
Jefferson Parish
701 Union Trust Building
Washington 5, D. C.

January 31, 1963.

Filed February 1, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil No. 1857-62

BANK OF NEW ORLEANS, *Plaintiff.*

vs.

JAMES J. SAXON, Comptroller of the Currency, *Defendant.*

NOTICE OF APPEAL

Notice is hereby given this 1st day of February, 1963, that defendant, James J. Saxon, Comptroller of the Currency, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 5th day of December, 1962, in favor of plaintiff against said defendant, James J. Saxon.

/s/ DAVID C. ACHESON,
United States Attorney.

Copy to: Edward L. Merrigan, Esquire,
425 13th Street, N.W.,
Washington, D. C.
Attorney for Plaintiff.

(6468-3)

SUPPLEMENTAL APPENDIX TO BRIEFS FOR APPEL-
LEES, BANK OF NEW ORLEANS AND TRUST COM-
PANY, GUARANTY BANK AND TRUST COMPANY,
BANK OF LOUISIANA IN NEW ORLEANS AND LOUIS-
IANA STATE BANK COMMISSIONER

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*

v.

BANK OF NEW ORLEANS AND TRUST COMPANY; GUARANTY
BANK AND TRUST COMPANY; BANK OF LOUISIANA IN NEW
ORLEANS; J. W. JEANSONNE, STATE BANK COMMISSIONER
OF THE STATE OF LOUISIANA, *Appellees*

No. 17681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL,
Appellees

**On Appeals from the United States District Court for the
District of Columbia**

A. J. WAECHTER
JONES, WALKER, WAECHTER,
POITEVENT
CARRERE & DENEGRÉ
New Orleans, Louisiana

RALPH FISHMAN
SESSIONS, FISHMAN, ROSENSON
& SNELLINGS
New Orleans, Louisiana

JAMES W. BEAN
BEAN & RUSH
Lafayette, Louisiana
G. HARRISON SCOTT
New Orleans, Louisiana

EDWARD L. MERRIGAN
929 Pennsylvania Building
Washington 4, D. C.
*Attorney for Appellee
Banks*

BENTLEY G. BYRNES
*Special Assistant Attorney
General of Louisiana and
Attorney for State Bank
Commissioner of Louisiana
New Orleans, Louisiana*
United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 24 1963

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

Nathan J. Paulson
CLERK

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*

v.

BANK OF NEW ORLEANS AND TRUST COMPANY; GUARANTY
BANK AND TRUST COMPANY; BANK OF LOUISIANA IN NEW
ORLEANS; J. W. JEANSONNE, STATE BANK COMMISSIONER
OF THE STATE OF LOUISIANA, *Appellees*

No. 17681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL,
Appellees

On Appeals from the United States District Court for the
District of Columbia

SUPPLEMENTAL APPENDIX TO BRIEFS FOR APPEL-
LEES, BANK OF NEW ORLEANS AND TRUST COM-
PANY, GUARANTY BANK AND TRUST COMPANY,
BANK OF LOUISIANA IN NEW ORLEANS AND LOUIS-
IANA STATE BANK COMMISSIONER

PREFACE TO APPENDIX

Appellees served and filed their briefs herein on *May 4, 1963*. In its Reply Brief, dated May 18, 1963, appellant Whitney states, at page 14, footnote 12:

“It has been argued to the Federal Reserve Board in a number of cases that applications by bank holding

companies for permission to acquire bank stock should be rejected on the ground that the law of the state in question prohibited branch banking. In view of the legislative history discussed above, the Federal Reserve Board (whose views as the principal interpreter and enforcer of the Federal Bank Holding Company Act are entitled to great weight) has had no difficulty in rejecting this argument . . .

“Moreover, the Bank Holding Company Act does not even require the Federal Reserve Board to seek the views of state authorities on a proposed acquisition, if the bank or banks to be acquired are *national banks* . . .” (Emphasis supplied)

Appellant Whitney, however, failed to apprise the Court of the decision of the Federal Reserve Board rendered on May 6, 1963 in the *Application of Trans-Nebraska Co.*, F.R. Docket No. BHC-66—a case decided two days after appellees filed their briefs herein. That case involved a *national bank*, as well as *state banks*. The Board applied a Nebraska statute like *Act 275 of 1962* as a basis for denying the holding company application. Counsel for appellant Whitney has advised counsel for appellees that he was aware of this case.

* * *

In his Reply Brief, served May 19, 1963 by mail, Comptroller Saxon continues to contend vigorously that Appellee Banks and the Louisiana State Bank Commissioner have no standing herein. However, said Appellant fails to explain why, on May 15, 1963, just 4 days earlier and 11 days after appellees filed their briefs herein, he testified before the House Subcommittee on Bank Supervision as follows:

“Mr. Saxon: . . . I affirmatively state to people at every proper opportunity, in every proper case, if they think they have been adversely affected to a substantial degree by a decision of the office, they have perhaps even a duty to challenge the office, *without any consideration of whether it is a national bank or not* . . . If they think that their interest is too substantially affected, they should do so . . .

Supp. Apx. 3

"*Mr. Multer*: You have never raised the objection in a court proceeding that the court has no right to review your action?

"*Mr. Saxon*: No, sir, absolutely not . . . in fact, encourage it. *Even in branch cases . . .*" (Emphasis supplied)

Counsel for appellant Saxon has advised counsel for appellees that he was aware of this testimony, having been advised thereof by the Attorney for the Comptroller shortly after it was given.

This Appendix contains reproductions of the pertinent portions of the Federal Reserve Board's decision and the Comptroller's said testimony—both of which occurred, as aforesaid, *after* appellees filed their briefs herein.

Supp. Apx. 5

FEDERAL RESERVE
press release

For immediate release

May 6, 1963.

The Board of Governors of the Federal Reserve System today announced its denial of the application of Trans-Nebraska Co., Lincoln, Nebraska, for permission to become a bank holding company by acquiring over 50 per cent of the outstanding common stock of The Martell State Bank, Martell, Nebraska, The Sioux National Bank of Harrison, Harrison, Nebraska, and Crawford State Bank, Crawford, Nebraska.

Attached are copies of the Order and Statement of the Board.

Attachments

UNITED STATES OF AMERICA
BEFORE THE BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C.

Docket No. BHC-66

In the Matter of the Application of
TRANS-NEBRASKA Co., Lincoln, Nebraska

for permission to become a bank holding company

Order Denying Application Under Bank Holding Company Act

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and section 222.4(a)(1) of Federal Reserve Regulation Y (12 CFR 222.4(a)(1)), an application on behalf of Trans-Nebraska Co., Lincoln, Nebraska, for permission to become a bank holding company by acquiring over 50 per cent of the outstanding common stock of The Martell State Bank, Martell, Nebraska, The Sioux

Supp. Apx. 6

National Bank of Harrison, Harrison, Nebraska, and Crawford State Bank, Crawford, Nebraska.

As required by section 3(b) of the said Act, the Board gave notice of receipt of the application to the Comptroller of the Currency and to the Director of Banking of the State of Nebraska, soliciting their views. The Comptroller submitted a recommendation, dated July 3, 1962, that the application be approved. The State Director of Banking also recommended, by letter of June 11, 1962, that the application be approved; however, by letter of September 26, 1962, he informed the Board that a poll of bankers in the State by the Nebraska Bankers Association indicated substantial opposition to bank holding companies and that, had he known this at the time of his letter of June 11, he would not have recommended approval of the application.

Notice of receipt of the application was published in the Federal Register on May 18, 1962 (27 F. R. 4748), affording opportunity for submission of comments and views regarding the proposed transaction. Thereafter, a public hearing, ordered by the Board pursuant to section 222.7(a) of the Board's Regulation Y (12 CFR 222.7(a)), was held before a duly selected Hearing Examiner; proposed findings of fact and conclusions of law were submitted by the parties; and the Hearing Examiner filed a Report and Recommended Decision wherein denial of the application was recommended. Applicant submitted exceptions, with supporting brief, to the said Report and Recommended Decision, and Protestants filed a reply to the exceptions.

Having considered all matters properly before the Board in this proceeding,

IT IS HEREBY ORDERED, for the reasons set forth in the Board's Statement of this date, that the said application be and hereby is denied.

Dated at Washington, D. C., this 6th day of May, 1963.

By order of the Board of Governors.

Supp. Apx. 7

Voting for this action: Chairman Martin, and Governors Baiderston, Mills, Robertson, Shepardson, and Mitchell.

Absent and not voting: Governor King.

(Signed) MERRITT SHERMAN
Merritt Sherman,
Secretary.

(SEAL)

BOARD OF GOVERNORS
OF THE

FEDERAL RESERVE SYSTEM

Application of Trans-Nebraska Co., Lincoln, Nebraska, for Permission to Become a Bank Holding Company By Acquiring More Than 50 Per Cent of the Outstanding Common Stock of the Martell State Bank, Martell, Nebraska, The Sioux National Bank of Harrison, Harrison, Nebraska, and Crawford State Bank, Crawford, Nebraska

STATEMENT

Trans-Nebraska Co. ("Applicant"), Lincoln, Nebraska, filed an application, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 ("the Act"), for permission to become a bank holding company by acquiring more than 50 per cent of the outstanding common stock of The Martell State Bank, Martell, Nebraska, The Sioux National Bank of Harrison, Harrison, Nebraska, and Crawford State Bank, Crawford, Nebraska.

Background.—Following the filing of the application and pursuant to requirement of the Act, *views on the application were requested of the Comptroller of the Currency and the Director of Banking for the State of Nebraska.* Notice of receipt of the application was also transmitted to the United States Department of Justice and was published in the Federal Register on May 18, 1962 (27 F.R. 4748). *By letter dated July 3, 1962, the Comptroller recom-*

mended that the application be approved. The State Director of Banking, by letter of June 11, 1962, also recommended approval; however, on September 26, 1962, he advised the Board that the results of a poll of bankers in the State by the Nebraska Bankers Association indicated substantial opposition to bank holding companies, and stated that—

“Had I had this information before me at the time that I was considering the . . . application, I would, of course, not have recommended that your Board act favorably upon the application, as I feel that this is a problem for the bankers to decide and not for the Director of Banking.”

A number of requests were received by the Board from bankers in Nebraska for a public hearing on the application, and because of the interest manifested in the proposal the Board concluded that, although not required by law, the public interest would be served by scheduling such a proceeding. The hearing, notice of which was published in the Federal Register of August 17, 1962 (27 F.R. 8233), was held in Omaha, Nebraska, on October 2-5, 1962, before Hearing Examiner David London, who was selected for such purpose by the United States Civil Service Commission pursuant to section 11 of the Administrative Procedure Act (5 U.S.C. 1010). . . .

On the basis of the factual record made at the hearing, including the Hearing Examiner's report and the pleadings described above presenting argument based upon the hearing record, the Board has reached the decision hereinafter indicated.

Statutory factors.—Section 3(c) of the Act requires the Board to take into consideration the following five factors: (1) the financial history and condition of the holding company and banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned;

and (5) whether the effect of the acquisition would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking. . . .

Financial history and condition.—Since Applicant is a proposed new corporate structure, the formal organization of which has been held in abeyance pending the Board's decision on the instant application, it has no financial history. The holding company's financial condition following organization would be satisfactory, assuming effectuation of the organizational plan as set forth in the application.

So far as concerns the banks involved, the Hearing Examiner found their financial history and condition to be satisfactory. The Board concurs.

Prospects.—With respect to the proposed subsidiary banks, the Hearing Examiner found as follows:

"The record . . . establishes that the future prospects of the three banks involved are, by and large, intimately related to the economy of the regions in which they are located. The economies of Crawford and Harrison, while by no means dynamic, appear to be stable, and the economy of the Martell area, being located near the State Capital, gives indications of growth, albeit not aggressive. Accordingly, it is concluded, and Protestants concede, that the future prospects of the three banks involved are not unfavorable, and this would be true whether or not they were to become affiliated with the proposed holding company system."

The Board concurs.

The Hearing Examiner found, and the Board concurs, that since Applicant's assets would consist principally of the stock of the three proposed subsidiary banks, its prospects, from the standpoint of profitable operations, may reasonably be regarded as paralleling those of the banks in question and, therefore, also may be adjudged as not unfavorable.

The Board notes, however, that the growth prospects of the three proposed subsidiary banks, and hence their potential for more profitable operations in the future, are limited because of the economies of the geographical areas in which they are located. This fact is recognized by Applicant both in the application and in the testimony of its witnesses at the public hearing. Accordingly, it would appear that Applicant's prospects for enhancing the profitability of its operations would be contingent largely upon the addition of additional banks to the holding company system. *In this regard, however, the Board also notes that on March 12, 1963, the Governor of the State of Nebraska signed into law a bill which, completely apart from the question of its effect on Applicant's proposed organization, would in any event appear to prohibit further acquisition of banks by holding companies in the State. The Board is of the opinion that this development would further limit Applicant's prospects. . . .*

Convenience, needs, and welfare.—The Hearing Examiner concluded that—

“Consideration of the entire record compels the conclusion that establishment of the proposed holding company would not have a significantly favorable effect upon the convenience, needs, or welfare of the communities or areas concerned.”

The Board concurs.

Effect of proposed acquisition on adequate and sound banking, public interest, and banking competition.—The Hearing Examiner found that, so far as the size or extent of the proposed holding company system is concerned, its formation would not be inconsistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking. The Hearing Examiner went on to state, however, that—

“... it is manifest from the legislative history of the Act that the thread of public interest runs throughout

the various statutory criteria which must be considered, and I have serious reservations regarding the compatibility of my findings regarding the management and capital structure of the proposed holding company with the public interest." [Footnote omitted]

The Board does not share the Hearing Examiner's reservations regarding the management of the proposed holding company nor his concern about the lack of an anticipatory firm underwriting commitment insofar as concerns the company's program for financing its acquisition of the Crawford and Sioux National banks. However, as pointed out by the Hearing Examiner, the legislative history of the Act shows a pervading concern on the part of the Congress that the "public interest" be given a prominent position in the Board's evaluation of applications under the Act, and the Board is of the opinion that there are features of the proposed method of financing which would be contrary to the public interest. . . .

This latter circumstance might not be objectionable were the holding company to have dynamic prospects for growth and expansion, either through growth of the subsidiary banks or through possible acquisition of additional banks, since such prospects might reasonably be expected to present a favorable climate for enhanced earning potential and capital appreciation of the public's investment in the holding company stock. However, such is not the case here. The proposed subsidiary banks are all small and their growth pattern has been slow and sporadic, with the possibility of a more favorable trend in the future conceded by Applicant to be quite limited. *Furthermore, in all likelihood legislation recently enacted by the State of Nebraska would prevent further expansion of Applicant's system through acquisition of additional banks (if, indeed, it would permit Applicant to consummate even its initial plans).*

Accordingly, the Board is faced with a situation where, for all practical purposes, the holding company involved

apparently would be frozen in its present posture with the chances of any significant enhancement of earnings on, or capital appreciation of, its stock speculative at best. This being the case, the Board does not feel that the proposal embodied in the application would be in the public interest in terms of what the public investors could expect to receive, either initially or in the future, in return for their investment.

It should be emphasized that the Board is not questioning the integrity, character, or good faith of the organizers of the proposed holding company. *However, for the reasons stated it is believed that consummation of the proposed arrangement would be adverse to the interests of the potential investors, and consequently adverse to the public interest.*

Accordingly, under the circumstances presented in this case, it is the judgment of the Board that the application should be denied.

May 6, 1963.

Supp. Apx. 13

HOUSE OF REPRESENTATIVES, U. S.

Report of Proceedings

Hearing held before
Subcommittee on Bank Supervision and Insurance of the
Committee on Banking and Currency

H.R. 729

TO ESTABLISH THE FEDERAL DEPOSIT AND SAVINGS INSURANCE
BOARD TO MANAGE THE FDIC AND FSLIC, AND
OTHER PURPOSES

H.R. 5874

TO ESTABLISH A FEDERAL BANKING COMMISSION TO ADMIN-
ISTER ALL FEDERAL LAWS RELATING TO THE EXAM-
INATION AND SUPERVISION OF BANKS

Wednesday, May 15, 1963
Washington, D.C.

637 *Mr. Saxon.* One other point, sir.

I affirmatively state to people at every proper opportunity, in every proper case, *if they think that business organization, that bank, they have been adversely affected to a substantial degree by a decision of the office, they have perhaps even a duty to challenge the office, without any consideration of whether it is a national bank or not, without any consideration of possible affront to this office. If they think that their interest is, too substantively affected, they should do so.*

In two merger cases—here are the opinions, if you feel the decision is erroneous, and you have been affected, take it to the courts.

Mr. Multer. You have never raised the objection in a court proceeding that the court had no right to review your action?

Mr. Saxon. No, sir, absolutely not—in fact, encourage it. Even in branch cases. Besides—you mentioned the Bank Merger Act, Mr. Chairman.

One of the real difficulties here, as I see it, lies in the statute itself, perhaps, that didn't make clear, as it could have, the authority granted. Of all the merger cases, I think today there are five in the courts, and arising primarily out of interpretations of the statute.

Mr. Multer. Of course, we did make clear that we were not going to take from the Department of Justice its right to bring anti-trust suits. At the same time now, I think we must give . . .

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*,

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al.*, *Appellees*.

No. 17,681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*,

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al.*, *Appellees*.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT
WHITNEY NATIONAL BANK IN JEFFERSON PARISH

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FILED

APR 9 1963

Nathan J. Paulson
CLERK

April 9, 1963.

STATEMENT OF QUESTIONS PRESENTED

The questions presented are:

(1) Whether a state statute which purports to prevent the opening for business of a duly organized national bank because of state disapproval of the ownership of its stock is an unconstitutional interference with the operation of the national banking system.

(2) Whether one national bank should be regarded as a "branch" of another national bank within the meaning of 12 U.S.C. § 36(c) because both are owned by the same bank holding company or because of anything else disclosed by the record in this case.

TABLE OF CONTENTS

	Page
Jurisdictional Statement	1
Statement of the Case.....	2
Statement of Points.....	11
Summary of Argument.....	12

Argument:

I. The District Court Erred in Holding That Section 3(5) of Louisiana Act 275 of 1962 Can Prevent the Comptroller of the Currency From Issuing His Certificate of Authority To Commence a Banking Business to Whitney National Bank in Jefferson Parish..	15
A. A State Attempt To Prohibit a National Bank From Opening for Business Is in Conflict With the National Bank Act, and Hence With the Supremacy Clause of the Constitution.....	16
B. Nothing in the Federal Bank Holding Company Act Gives the States the Right To Prohibit a National Bank From Opening for Business.....	21
C. Section 3(5) of the Louisiana Statute Violates Article I, Section 10, Clause 1 of the United States Constitution	32
II. Whitney National Bank in Jefferson Parish Is Not a "Branch" of Whitney National Bank of New Orleans Within the Meaning of 12 U.S.C. § 36(c).....	33
A. Congress Has Deliberately Chosen To Regulate Branch Banking and Holding Company Banking Differently	34
B. There Are Important Differences Between a Branch and a Bank Holding Company Subsidiary	39
C. The Relevant Judicial Decisions Have Rejected Appellees' "Branch" Argument.....	42
Conclusion ...	45

Appendix:

Statutes Involved	47
-------------------------	----

TABLE OF CITATIONS

Cases:	Page
<i>American Surety Co. v. Baldwin</i> , 90 F.2d 708 (7th Cir. 1937) .	21
<i>Arkadelphia Co. v. St. Louis S.W. Ry.</i> , 249 U.S. 134, 145-146 (1919)	32
<i>Bank of America N.T. & S. Ass'n v. Lima</i> , 103 F. Supp. 916 (D. Mass. 1952)	19
<i>Bank of New Orleans v. Federal Reserve System</i> , 5th Cir., No. 19,788	6
<i>Braeburn Securities Corp. v. Smith</i> , 15 Ill. 2d 55, 153 N.E. 2d 806 (1958), appeal dismissed, 359 U.S. 311 (1959)	15, 25, 26, 27
<i>Brust v. First National Bank of Stevens Point</i> , 184 Wis. 15, 198 N.W. 749 (1924)	21
* <i>Camden Trust Co. v. Gidney</i> , 301 F.2d 521 (D.C. Cir.), cert. denied, 369 U.S. 886 (1962)	14, 44-45
* <i>Cook County National Bank v. United States</i> , 107 U.S. 445, 448 (1883)	18-19
<i>Cooper v. O'Connor</i> , 105 F.2d 761, 763 (D.C. Cir. 1939)	19
* <i>Davis v. Elmira Savings Bank</i> , 161 U.S. 275 (1896)	20
* <i>Deitrick v. Greaney</i> , 309 U.S. 190, 194 (1940)	18, 26
<i>Dinan v. First National Bank of Detroit</i> , 117 F.2d 459 (6th Cir. 1941), cert. dismissed, 315 U.S. 824 (1942)	19
* <i>Easton v. Iowa</i> , 188 U.S. 220, 238 (1903)	20
<i>Equitable Life Assurance Society v. Moore</i> , 29 F. Supp. 179 (E.D. Ill. 1939)	26
* <i>First National Bank in Billings v. First Bank Stock Corp.</i> , 306 F.2d 937 (9th Cir. 1962)	14, 42-43, 44
<i>First National Bank of San Jose v. California</i> , 262 U.S. 366 (1923)	21
* <i>Franklin National Bank v. New York</i> , 347 U.S. 373 (1954) .	20-21
<i>Henrys v. Raboin</i> , 395 Ill. 118, 69 N.E. 2d 491 (1946)	19
<i>McClelland v. Merchants' & Miners' National Bank</i> , 236 Pac. 774 (Colo. 1925)	26
<i>McCulloch v. Maryland</i> , 4 Wheat. 316 (1819)	20, 26
<i>Mercantile National Bank at Dallas v. Langdeau</i> , 371 U.S. 555 (1963)	21
<i>Mitchell v. Riegel Textile, Inc.</i> , 259 F.2d 954 (D.C. Cir. 1958) .	32
<i>National Bank v. Commonwealth</i> , 9 Wall. 353, 362 (1870) . . .	21
<i>Opinion of the Justices</i> , 102 N.H. 106, 151 A.2d 236 (N.H. 1959)	15, 25, 27

Cases—Continued

	Page
<i>Scott v. Pequonnock National Bank</i> , 15 Fed. 494 (S.D.N.Y. 1883)	26
<i>Starr v. O'Connor, Comptroller of the Currency</i> , 118 F.2d 548 (6th Cir. 1941)	21
<i>State Bank of Ohio v. Knoop</i> , 16 How. 369 (1853)	32
<i>Steward v. Atlantic National Bank of Boston</i> , 27 F.2d 224 (9th Cir. 1928)	19

Statutes and Regulations:

Constitution of the United States

Article I, Section 10, Clause 1	32
Article VI, Clause 2	11

Bank Holding Company Act of 1956, 70 Stat. 133

12 U.S.C. §§ 1841-1848	5, 15, 37
§ 1842(c)	38
§ 1842(d)	30, 31
§ 1845	41
§ 1846	13, 15, 16, 21-23, 25, 27, 30
§ 1848	6

Banking Act of 1933, 48 Stat. 162, as amended

12 U.S.C. § 36(c)	2, 3, 7, 12, 14, 20, 33-38, 42-45
§ 52	26
§ 61	36, 42
§ 84	41
§ 161	36
§ 221a	36
§ 334	36
§ 481	36

Louisiana Act 275 of 1962 (Ch. 12 Title 6, Louisiana Revised Statutes)

§ 3(5) (§ 1003(5) as codified)	2, 3, 7-15, 23-29, 32, 45
--------------------------------------	---------------------------

Louisiana Revised Statutes, Title 6

§ 54	3
§ 328	3

McFadden Act, § 7, 44 Stat. 1224 (1927)	35
---	----

Statutes and Regulations—Continued

	Page
National Bank Act, Act of June 3, 1864, c. 106, 13 Stat. 99, as amended	
12 U.S.C. § 21-215	2
§ 21-28 (R.S. § 5133-5136, 5168-5170)	17
§ 24 (R.S. § 5136)	6
§ 26 (R.S. § 5168)	5, 12, 17
§ 27 (R.S. § 5169)	1, 5, 7, 12, 17, 39
28 U.S.C. § 1291	2
28 U.S.C. § 1331	2
Fed. R. Civ. P. 73	2

Congressional Material:

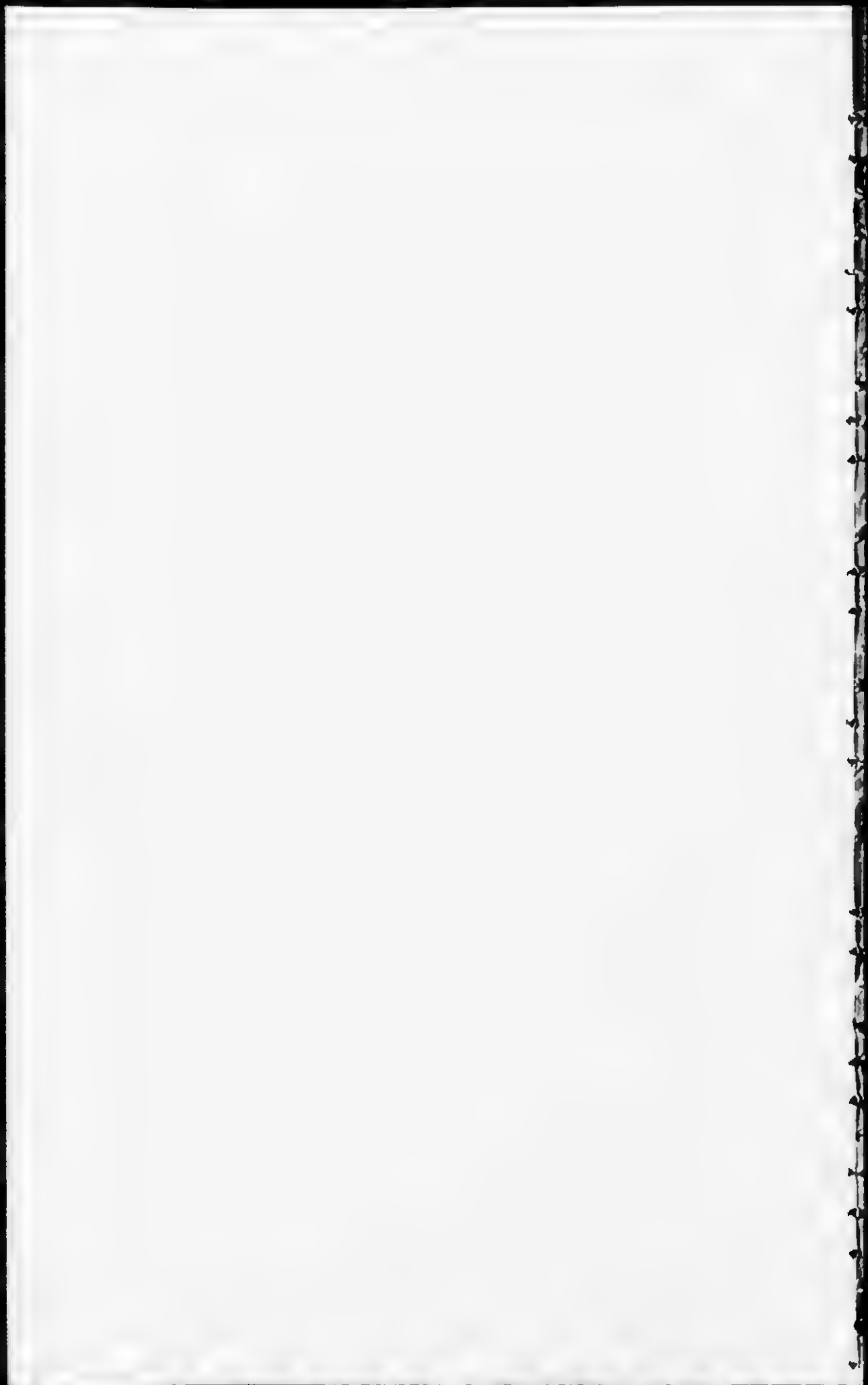
- (1) Hearing Before the House Committee on Banking and
Currency under H. Res. 141 (Group, Chain and Branch
Banking), 71st Cong., 2d Sess., Vol. 1, Part 1, p. 5.... 36
- (2) Hearings on S.76 and S.1118, Senate Com. on Banking
and Currency, 83d Cong., 1st Sess., Part 2 (1953), at
pp. 144, 204..... 21
- (3) Hearings on S.76 and S.1118, Senate Com. on Banking
and Currency, 83d Cong., 2d Sess., Part 3 (1954), at
pp. 281-286, 311, 658..... 21-22
- (4) Hearings on S.880, S.2350, and H.R. 6227, Subcom. of
Senate Com. on Banking and Currency, 84th Cong.,
1st Sess. (1955)..... 22, 37
- (5) House Report No. 609 (84th Cong., 1st Sess. 1955) at
p. 24
 31 |
- (6) S. Rep. No. 1095 (84th Cong., 1st Sess. 1955) (Part 1)
at p. 11..... 31, 38
- * (7) S. Rep. No. 1095 (84th Cong., 2d Sess. 1956) (Part 2)
at p. 5
 22 |
- (8) 102 Cong. Rec. 6857 (1956)..... 31

VII

Miscellaneous:

	Page
(1) "Branch, Chain, and Group Banking", <i>Banking Studies</i> , Board of Governors of the Federal Reserve System (1941) at pp. 113, 125, 130.....	34
(2) 2 U.S. Code, Cong. and Admin. News, 84th Cong. 2d Sess. (1956)	38
(3) Gerald C. Fischer, <i>Bank Holding Companies</i> (1961)	34
(4) 7 Michie, <i>Banks & Banking</i> , Ch. 15, § 5 (1944)	21

* Cases or authorities chiefly relied upon are marked by asterisks.



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*,

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al.*, *Appellees*.

No. 17,681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*,

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al.*, *Appellees*.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT
WHITNEY NATIONAL BANK IN JEFFERSON PARISH

JURISDICTIONAL STATEMENT

The appellees' suit was brought to enjoin the Comptroller of the Currency of the United States from taking certain action proposed by him, that is, the issuance to Whitney National Bank in Jefferson Parish, Louisiana, of a certificate of authority to commence a banking business. Appellees claimed that issuance of such a certificate by the Comptroller would exceed his statutory authority under Rev. Stat. § 5169

(1878), 12 U.S.C. § 27, on the theory that the issuance of the certificate was forbidden by the Banking Act of 1933, c. 89, § 23, 48 Stat. 189, 12 U.S.C. § 36(c), which regulates the location of branches of national banks. The amount in controversy exceeded the sum or value of \$10,000 exclusive of interest and costs. The District Court therefore had jurisdiction under 28 U.S.C. § 1331, providing for federal-question jurisdiction.

Subsequently, after the enactment of Section 3(5) of Louisiana Act 275 of 1962 (now codified as La. Rev. Stat. 6:§1003(5)), forbidding the opening of banks owned by bank holding companies, appellees contended that this statute provided a new and independent reason why the Comptroller was without authority to issue a certificate under 12 U.S.C. § 27. This issue is likewise a federal question, of which the District Court had jurisdiction under 28 U.S.C. § 1331.

Final judgment in favor of appellees was entered by the District Court on December 5, 1962. Appellant Whitney National Bank in Jefferson Parish filed its Notice of Appeal on January 31, 1963, and appellant Comptroller of the Currency filed his Notice of Appeal on February 1, 1963. This Court, therefore, has jurisdiction of the appeal under 28 U.S.C. § 1291 and Fed. R. Civ. P., Rule 73.

STATEMENT OF THE CASE¹

Whitney National Bank of New Orleans (Whitney-New Orleans) is a large metropolitan bank organized and chartered under the National Bank Act, Act of June 3, 1864, c. 106, 13 Stat. 99, as amended, 12 U.S.C. §§ 21-215. Whitney-New Orleans is located in the City of New Orleans, which is coextensive with the Parish of Orleans. (A parish in Louisiana is the equivalent of a county in other states.) Whitney-

¹ "R." citations are to pages of the Joint Appendix.

Proof of most of the relevant facts is supplied by the decision of the Federal Reserve Board, R. 96-106, and Mr. Saxon's affidavit of June 20, 1962, R. 41-48.

New Orleans' home office and its 11 branches are all located in Orleans Parish, although that parish includes only the central part of the greater New Orleans metropolitan area. The reason that Whitney-New Orleans is limited to Orleans Parish is that both Whitney-New Orleans and other New Orleans national banks are prevented by 12 U.S.C. § 36(c) from establishing branches outside Orleans Parish. That section provides that national banks may establish branches only within the geographic limits imposed on state banks by state law. Louisiana state banks in New Orleans (except those with capital of less than \$100,000) are prohibited from establishing branches outside Orleans Parish by La. Rev. Stat. 6:§§ 54 and 328.

As the New Orleans metropolitan area has expanded, both Whitney-New Orleans and its urban competitors have found themselves greatly handicapped in being unable, because of the geographical restrictions mentioned above, to follow their customers into the suburbs outside the limits of Orleans Parish. This problem is typical of the problems faced by city banks in areas all over the country (R.100). As has happened in similar situations throughout the United States, the large New Orleans banks have sought to be connected with banking operations in the suburbs by means other than establishing branches, from which they are precluded.

Jefferson Parish, adjacent to Orleans Parish on the west, is a rapidly developing part of the New Orleans metropolitan area (R.100-101). Many of the residents of Jefferson Parish are customers of the large New Orleans banks, including Whitney-New Orleans. They, of course, find it inconvenient to maintain their relations with their downtown banks as long as those banks are precluded from establishing branches in their neighborhoods. Two of Whitney-New Orleans' principal competitors have met this problem by establishing "affiliate" or "satellite" banks in Jefferson Parish. The National Bank of Commerce in New Orleans, Whitney-New Orleans' largest competitor, in 1955 arranged for a majority of its stockholders to subscribe to a majority of

the stock of a newly organized bank in Jefferson Parish, named the National Bank of Commerce in Jefferson Parish. (See R.42, 49-56, 116-117.) This bank has now been in operation for more than seven years, and presently has five offices located in Jefferson Parish. A similar method was used by the National American Bank, the fourth largest bank in New Orleans, whose individual controlling stockholder purchased a controlling interest in the Merchants Trust and Savings Bank of Kenner, which operates in Jefferson Parish. (R.42, 116. Merchants Trust was formerly a plaintiff in these proceedings, but withdrew after the above circumstances were pointed out by Whitney-Jefferson, being replaced by the Bank of Louisiana. R. 169, 172-174, 203.)

The close connections thus established between two of Whitney-New Orleans' three principal competitors and banks in Jefferson Parish have enabled these banks to take customers away from Whitney-New Orleans, and have given them a very substantial competitive advantage over Whitney-New Orleans in Jefferson Parish. In these circumstances, Whitney-New Orleans determined that it too must establish relations with a bank in Jefferson Parish to maintain its competitive position. Whitney-New Orleans prepared a program by which another national bank could be established in Jefferson Parish, a separate corporate entity but connected with Whitney-New Orleans in that both banks would be owned by the same registered bank holding company. Under federal law, approval would be required of the various phases of the program by the Federal Reserve Board and the Comptroller of the Currency. These agencies, largely because of the considerations set forth above, have given their approval (R.44-47, 96-106).

The Whitney Holding Corporation program provided that Whitney-New Orleans would submit to its stockholders a plan of reorganization, the effect of which would be that the stock of the bank would be owned by Whitney Holding Corporation (Whitney Holding) and the stock of Whitney Holding would be owned pro rata by the former stock-

holders of the bank (R.43-44). Whitney-New Orleans would continue, as previously, to conduct a banking business limited to Orleans Parish. Whitney-New Orleans, if its stockholders approved, and under specific regulations of the Federal Reserve Board, would pay to Whitney Holding, out of its undivided profits available for dividends, a dividend of \$650,000. Whitney Holding would use these funds to establish, as a wholly owned subsidiary, Whitney National Bank in Jefferson Parish (Whitney-Jefferson) (R.46). The stockholders overwhelmingly approved this program (R.324-328).

Under federal law the Comptroller of the Currency had sole jurisdiction to pass on the reorganization of Whitney-New Orleans and the formation of a new national bank in Jefferson Parish. Rev. Stat. § 5168 (1878), as amended, 12 U.S.C. § 26, as amended, 12 U.S.C. § 26 (Supp. III, 1959-61); Rev. Stat. § 5169 (1878), 12 U.S.C. § 27; Act of Sept. 8, 1959, § 20, 73 Stat. 460, 12 U.S.C. § 215, as amended, 12 U.S.C. § 215 (Supp. III, 1959-61). The Federal Reserve Board had sole jurisdiction to pass on the use of funds of Whitney Holding to create Whitney-Jefferson and on the acquisition of the stock of that bank by Whitney Holding (Act of May 9, 1956, c. 240, §§ 2-9, 70 Stat. 133, 12 U.S.C. §§ 1841-1848). Accordingly, Whitney-New Orleans submitted its program to the Comptroller of the Currency and the Federal Reserve Board by detailed written applications filed in June and July 1961. The application to the Board was published in the Federal Register on July 28, 1961 (R.98). On October 3, 1961, after four months' investigation, the Comptroller approved the reorganization of Whitney-New Orleans and the creation of Whitney-Jefferson, all subject to the approval of the Federal Reserve Board (R.44). On May 3, 1962, the Federal Reserve Board approved, as in the public interest, the formation of Whitney Holding and its acquisition of the stock of the two proposed banking subsidiaries (R.96). The Board's action was taken after a public hearing, held on January 17, 1962, of which notice had previously been given in the Federal Register (R.58), which notice invited all interested

parties to appear and register their views. *Not one of the appellees had appeared or registered any objection to the Whitney program or any part thereof (R.61).*²

On May 10, 1962, Whitney-Jefferson executed and delivered to the Comptroller of the Currency its Articles of Association and its Certificate of Organization. On that day, in accordance with Rev. Stat. § 5136 (1878), as amended, 12 U.S.C. § 24, as amended, 12 U.S.C. § 24 (Supp. III, 1959-61), Whitney-Jefferson became a body corporate and a national banking association. By letter dated May 11, 1962, William B. Camp, Deputy Comptroller of the Currency, recognized the corporate existence of Whitney-Jefferson as a national banking association (R.392-394). On May 18, 1962, the Comptroller approved the final corporate steps necessary to complete the Whitney Holding Corporation program (R. 34, 46).

On May 10, 1962, the first meeting of the stockholders of Whitney-Jefferson was held, and the directors of that bank were duly elected. On May 24, the directors met, were sworn and qualified, and took office, paying the purchase price for their qualifying shares. Bylaws were adopted, and officers of the bank were elected (R.46, 390). Whitney-Jefferson, the new bank, subscribed for \$18,000 worth of stock in the Federal Reserve Bank of Atlanta, and paid therefor (R. 390). Whitney-Jefferson thus became a member in its own right of the Federal Reserve System. Whitney-Jefferson has its own separate capital structure, consisting of \$500,000

² In spite of their failure to appear in the Board proceedings, two of the appellee banks have filed a petition to review the Board's order in the Court of Appeals for the Fifth Circuit. *Bank of New Orleans v. Board of Governors of the Federal Reserve System*, 5th Cir., No. 19,788. The petition purports to be filed under Section 9 of the Federal Bank Holding Company Act, 12 U.S.C. § 1848, although that section provides that "any *party* aggrieved by an order of the Board" (italics added) may petition for review. Section 1848 does not provide that the filing of a petition for review shall stay the effectiveness of the Board's order; the order in question here has not been stayed and is now in effect.

capital, \$100,000 surplus, and \$50,000 undivided profits, all of which has been paid (R. 46, 114, 389).

As of May 25, 1962, the sole remaining legal step necessary to permit the opening of Whitney-Jefferson for business was the issuance to it by the Comptroller of a certificate permitting it to commence business as a national bank. The Comptroller had already determined to issue such a certificate, in the exercise of his discretionary authority under 12 U.S.C. § 27, and was about to do so when this action was filed on June 9, 1962; Whitney-Jefferson was prepared to open, and would have opened its doors for business and commenced operations virtually as soon as it received such a certificate (R. 16, 27, 47, 115-131, 181-184, 329, 390-391). The issuance of the certificate was thus a pure formality.

The original plaintiffs were three Louisiana state banks which claimed that they would lose business if Whitney-Jefferson were allowed to open (R. 16-19, 233). They contended that Whitney-Jefferson should be treated as though it were a branch of Whitney-New Orleans, and hence illegal under the branch banking restrictions contained in the national banking law, 12 U.S.C. § 36(c). The banks sought a declaratory judgment in their favor and an injunction against the Comptroller prohibiting him from issuing his certificate to Whitney-Jefferson. Whitney-Jefferson moved to intervene as a defendant on June 19 (R. 40-41). Plaintiffs initially opposed this motion (R. 147, 183), the hearing on which was delayed until July 6, 1962, at which time, without prior notice, plaintiffs withdrew their opposition (R. 228-229). During the entire interval, plaintiffs' action had frustrated the efforts of Whitney-Jefferson to become a party, and the bank was effectively prevented from opening for business.

On the filing of the action, the Comptroller, who, as stated, was about to issue his certificate, informally agreed not to do so until plaintiffs could apply for a preliminary injunction (R. 179). Defendants' efforts to obtain a prompt hearing were unsuccessful, and finally, on June 27, the Comptroller informed the Court through his attorney that he

contemplated immediate issuance of a certificate for Whitney-Jefferson to commence business, and the bank stated that it was ready to commence business immediately (R. 181-184, 190-191). The District Court thereupon granted a temporary restraining order without hearing any argument on the merits, stating that it was doing so for the sole purpose of preserving the status quo until a hearing on the preliminary injunction could be had (R. 176, 182, 190). When the matter again came on for hearing on July 6, 1962, it was before a different judge, who was unfamiliar with the case and was unwilling to express any opinion on the merits without hearing further argument, which was impossible at that time. The Court issued a preliminary injunction, stating that it was not in any way passing on the merits of the litigation but was merely ensuring that the status quo be preserved *pendente lite* (R. 272-273).

We must now go back several weeks to explain a parallel course of events that had been developing in Louisiana. On June 3, 1962, six days before the complaint in this action was filed, House Bill No. 1221 was introduced in the Louisiana House of Representatives (R. 150-156, 314). This bill prohibited the formation of new bank holding companies and new acquisitions of bank stock by existing bank holding companies. The bill as introduced would not have affected Whitney Holding Corporation's ownership of Whitney-Jefferson, which was already an existing fact, or the right of Whitney-Jefferson to open for business upon receiving proper authorization from the federal authorities.

Thus the situation at the time this action was brought was that Louisiana law contained no provision which in any way restricted the formation or existence of bank holding companies or the acquisition by them of bank stock. A bill was before the Legislature which, if enacted, would prohibit the formation of new bank holding companies or the acquisition by an existing bank holding company (*e.g.*, Whitney Holding) of any additional subsidiaries, but would not

9

affect Whitney Holding's ownership of Whitney-Jefferson or the right of Whitney-Jefferson to open for business.

On June 27, 1962, the same day on which the temporary restraining order was issued, more than two weeks after this action was commenced, and some time after the Comptroller would have issued his certificate and the bank would have opened had it not been for the commencement of this action, the bill before the Louisiana Legislature was amended on the floor of the House to insert a new subsection 5 in Section 3 thereof. That subsection reads:

"It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued" (R. 157, 207, 334).

In the argument on July 6, 1962, on plaintiffs' motion for a preliminary injunction, Whitney-Jefferson argued that such an injunction should not be issued because, in view of the pendency of the bill as amended in the Louisiana Legislature, the injunction could have the effect of decisively changing the status quo rather than preserving it as intended (R. 264-266). The Court rejected this argument. The bill, containing the amendment quoted, was enacted into law, being signed by the Governor of Louisiana on July 10, 1962 (R. 300). Having been certified as "emergency" legislation, it became effective on that day (R. 290, 296, 301). This was a month after the Comptroller's agreement temporarily to withhold his certificate because of the filing of this action, almost two weeks after the temporary restraining order had issued on June 27, and four days after the preliminary injunction had been issued.

It is of the utmost importance to realize that, but for the restraining order and preliminary injunction, Whitney-Jefferson would have received its certificate and would have opened for business considerably before the effective date of the statute. Since the Louisiana statute does not in any way purport to make illegal the operation of holding-com-

pany-owned banks which were open on the effective date of the statute, the continued operation of Whitney-Jefferson would have been consistent with the statute, and the bank would be in operation today. Whitney-Jefferson did not open before the effective date of the statute, and is not in operation today, *solely* because the Comptroller was restrained from issuing his certificate by orders issued in this litigation, which at that time involved only the quite different question of whether Whitney-Jefferson should be treated as a "branch" of Whitney-New Orleans.

The temporary restraining order and preliminary injunction had been issued to preserve the status quo, but in fact they had the opposite effect. During the period when the Comptroller was restrained by these orders, the status quo was drastically altered by the enactment of the Louisiana statute. That enactment changed the entire complexion of the present litigation. In their next pleading, their Points and Authorities in support of their cross-motion for summary judgment, filed July 24, 1962, appellees relied on the Louisiana statute as an additional reason why Whitney-Jefferson would not open. Subsequently the State Bank Commissioner of Louisiana moved for leave, and was allowed, to intervene as a plaintiff, on the ground that the opening of Whitney-Jefferson would infringe the new statute, of which he was the administrator (R. 346-358). Appellants took the position that Section 3(5) of the Louisiana statute does not apply to Whitney-Jefferson, or that, if it does so apply, it is *pro tanto* unconstitutional.

All parties moved for summary judgment, and oral argument was heard on October 19, 1962, before yet a third judge, who had heard none of the preceding arguments. In its memorandum opinion of November 5, 1962, the District Court held that the Comptroller was precluded from issuing his certificate by Section 3(5) of the Louisiana statute (R. 435, 437). The Court *expressly declined* to decide the question whether Whitney-Jefferson should be treated as an illegal "branch" of Whitney-New Orleans (R. 438).

Accordingly, it must be assumed, for the purpose of re-

viewing the District Court's determination of the only issue it decided, that Whitney-Jefferson is not an illegal "branch." Yet it will be remembered that the "branch" question was the only issue before the Court when the temporary restraining order and preliminary injunction were granted, and that, had it not been for the desire of the Court to preserve the status quo until a decision on that issue could be reached, Whitney-Jefferson could and would have opened without infringing any Louisiana statute and would be in operation today. Thus we have the bizarre situation that temporary orders, entered to preserve the status quo, were subsequently held to have decisively *changed* the status quo and to have prevented appellants from taking action which, so far as anything decided on the merits by the District Court is concerned, they were fully entitled to take at the time. In all the proceedings prior to the enactment of the Louisiana statute, appellants had indicated their willingness to let continued operation of the new bank rest on the Court's ultimate decision on the merits of the "branch" question—which would have controlled its continued operation in any event.

STATEMENT OF POINTS

1. The District Court erred in enjoining the opening of Whitney National Bank in Jefferson Parish on the ground that such opening would violate Section 3(5) of Louisiana Act 275 of 1962, for the following reasons:

A. Section 3(5) of Louisiana Act 275 of 1962, which purports to prohibit the opening of banks within the state which are owned by bank holding companies, if interpreted as applying to national banks, violates the Supremacy Clause (Article VI, Clause 2) of the United States Constitution to the extent that it would prevent the Comptroller of the Currency of the United States from issuing his Certificate of Authority to commence a banking business to Whitney National Bank in Jefferson Parish, or would prevent such bank from opening, where

(1) before the introduction or enactment of the Louisiana statute Whitney National Bank in Jefferson

Parish had been duly organized and its stock acquired by Whitney Holding Corporation, and

(2) before the enactment of the Louisiana statute the Comptroller of the Currency would have issued the Certificate of Authority in question, and the bank would have opened, had he not been prevented from doing so by a temporary restraining order and preliminary injunction issued by the District Court in this proceeding to preserve the status quo pending determination of the wholly different issue of whether such bank would be an unlawful "branch" under the provisions of 12 U.S.C. § 36(c), which issue was never adjudicated by the District Court.

B. Section 3(5) of Louisiana Act 275 of 1962, if interpreted as preventing the opening of Whitney National Bank in Jefferson Parish, violates Article I, Section 10, Clause 1, of the United States Constitution.

2. If the Court should reach the question whether Whitney National Bank in Jefferson Parish is a "branch" of Whitney National Bank of New Orleans within the meaning of 12 U.S.C. § 36(c), it should hold that one national bank is not a "branch" of another merely because both are owned by the same bank holding company, or because of anything else disclosed by the record in this case.

SUMMARY OF ARGUMENT

I. Section 3(5) of Louisiana Act 275 of 1962 violates the Supremacy Clause of the United States Constitution. In purporting to forbid the opening of a national bank, which has satisfied all requirements of federal law and has been approved and chartered by the appropriate federal authorities, Louisiana has placed itself directly in conflict with the National Bank Act. That Act sets forth a complete system for the organization, establishment and chartering of national banks, and provides (12 U.S.C. §§ 26-27) that a national bank may open for business on meeting all the requirements of the Act itself. It is clear

both from the language of the Act and from a long line of cases construing it that Congress intended to pre-empt the field of determining when a national bank may open for business. Any state attempt to impose additional requirements on a national bank before it may open is, therefore, unconstitutional, unless by some later enactment Congress has remitted to the states the power to interfere with the opening of a national bank.

The District Court held that Section 3(5) of the Louisiana statute was "authorized" by Section 7 of the Federal Bank Holding Company Act, 12 U.S.C. § 1846. That section, however, merely provides that the enactment of the Holding Company Act was not intended as a Congressional pre-emption of the field of bank holding company regulation. It was expressly stated that Section 1846 "does not grant any new authority to states over national banks." Thus, since Louisiana would have had no power to enact Section 3(5) before the passage of the Federal Bank Holding Company Act, it remains without such power today.

Even on the assumption that states have the power to prohibit ownership by holding companies of stock in national banks (a dubious question which need not be decided in determining the narrow issue presented here), such power is very different from power in the states to interfere with the opening for business or operation of a national bank itself. The fact that a state has jurisdiction over persons or corporations within its borders who own stock in national banks does not give it jurisdiction to prevent the opening of such a bank because of objections by the state to such ownership. Recognition of this power in the states would countenance state interference with national banks going far beyond their constitutional powers over stockholders, and would seriously impair the dual banking system.

Moreover, Section 3(5) as applied to Whitney-Jefferson impairs the obligation of a contract between the United States and the bank, and deprives the bank of vested rights

which it was prevented from exercising before the effective date of the state statute in question only by injunctive orders issued in this case for the purpose of preserving the then existing status quo, pending determination whether Whitney-Jefferson was an illegal branch of Whitney-New Orleans—a question not reached at all by the Court below. This presents a situation which this Court should rectify in the exercise of its equity powers.

II. Appellees' alternate claim below that Whitney-Jefferson is in substance a "branch" of Whitney-New Orleans (not passed on by the District Court) must be rejected. Holding company banking is a recognized alternative to branch banking which Congress has deliberately chosen to regulate by a different statutory scheme. When the present branch-banking statute (12 U.S.C. § 36(c)) was enacted in 1933, Congress heard extensive testimony on the similarities and differences between branch banking and holding company banking, and devised different sets of provisions to deal with each. In enacting the Federal Bank Holding Company Act of 1956, Congress expressly rejected a proposal to make bank holding companies subject to state restrictions on branch banking.

First National Bank in Billings v. First Bank Stock Corp., 306 F.2d 937 (9th Cir. 1962), the only case which has dealt with the precise issue presented here, held on very similar facts that a holding company subsidiary was not a "branch." There are many important operating differences between these two types of banking, stemming in large part from the two different patterns of regulation which Congress has enacted. On the facts of the present case it is clear that Whitney-Jefferson will not operate as though it were a branch of Whitney-New Orleans. This result, moreover, follows *a fortiori* from *Camden Trust Co. v. Gidney*, 301 F.2d 521 (D.C. Cir.), *cert. denied*, 369 U.S. 886 (1962), the only relevant precedent in this Circuit, in which the Court rejected a claim that one bank was a "branch" of another which was owned by the same individual stockholders.

ARGUMENT

I

THE DISTRICT COURT ERRED IN HOLDING THAT SECTION 3(5) OF LOUISIANA ACT 275 OF 1962 CAN PREVENT THE COMPTROLLER OF THE CURRENCY FROM ISSUING HIS CERTIFICATE OF AUTHORITY TO COMMENCE A BANKING BUSINESS TO WHITNEY NATIONAL BANK IN JEFFERSON PARISH.

The issue presented by this case is whether a state can constitutionally prohibit a national bank from opening its doors because of state disapproval of the owners of the bank's stock. The court below held that the states have the power to do this, and in its order enjoined the appellants from chartering and opening Whitney-Jefferson in violation of Louisiana Act 275 of 1962, "*the enactment of which by the State of Louisiana was authorized by the Federal Bank Holding Company Act, 12 U.S.C. § 1846*" (italics added) (R. 451).

Throughout this litigation the appellees have argued that the Federal Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841-1848, somehow indicates a Congressional intent to permit the states to do what Louisiana has done here. The District Court was convinced by this argument. In its Memorandum Opinion the Court stated:

"The Court rules that this statute [Section 3(5) of Louisiana Act 275] is directly applicable to the proposed Defendant, Whitney National Bank in Jefferson Parish and that said statute makes it unlawful for said bank to commence business. Relying on the authority of *Braeburn Securities Corp. v. Smith*, 153 N.E. 2d 806, appeal dismissed for want of substantial Federal question, 359 U.S. 311 (1959) and *Opinion of the Justices*, 151 A.2d 236 (N.H. 1959) upholding the constitutionality of similar state statutes, the Court rules that the passage of Louisiana Act 275 3(5) of 1962 was within the power reserved to the states under 12 U.S.C.

Section 1846, the Federal Bank Holding Company Act"
(R. 437).

In so holding the District Court fell into serious error. The narrow question before the court below, as stated above, was whether a state could constitutionally prohibit a national bank from opening its doors because of state disapproval of the owners of the bank's stock. It is not, and cannot be, argued that before the enactment of the Federal Bank Holding Company Act a state could do this, since the federal government had by the National Bank Act of 1864 pre-empted the field of the establishment of national banks. This is shown in the section immediately following. The pre-emption of this field is not modified or withdrawn by the Federal Bank Holding Company Act. As the second following section demonstrates, all that Section 1846 of that Act purports to do—as Congress made abundantly clear—was not to pre-empt the field of *bank holding company regulation*, thus leaving unaffected the power and jurisdiction of the states in *that* field. This is a precise distinction, but one of critical and far-reaching importance.

A. A STATE ATTEMPT TO PROHIBIT A NATIONAL BANK FROM OPENING FOR BUSINESS IS IN CONFLICT WITH THE NATIONAL BANK ACT, AND HENCE WITH THE SUPREMACY CLAUSE OF THE CONSTITUTION.

National banks are regulated primarily by the National Bank Act, originally enacted in 1864 to establish a national banking system. Appellants' first and primary contention is that in the National Bank Act Congress has set, to the exclusion of all other standards, the standards by which the organization, establishment and commencement of business of national banks are to be governed. Thus Congress has pre-empted, to the exclusion of state legislation, the field of the organization, establishment and opening for business of national banks. If this contention is accurate, it follows that any state legislation dealing with these subjects, par-

ticularly in a manner inconsistent with the provisions of the National Bank Act, is unconstitutional.

A series of provisions in the National Bank Act, Rev. Stat. §§ 5133-5136, 5168-5170 (1878), as amended, 12 U.S.C. §§ 21-28 (1958 and Supp. III, 1959-61), sets forth a complete and systematic scheme for the establishment of national banks. Section 21 of 12 U.S.C. provides for articles of incorporation; Section 22 provides for an organization certificate; Section 23 provides for the execution and transmission to the Comptroller of the Currency of the organization certificate; Section 24 provides that a national banking association shall become a body corporate "as from the date of the execution of its organization certificate," and sets forth in great detail the corporate powers of national banking associations.

Section 26, which is particularly important to the present case, reads as follows:

"Whenever a certificate [of organization] is transmitted to the Comptroller of the Currency, as provided in this chapter, and the association transmitting the same notifies the comptroller that all of its capital stock has been duly paid in, and that *such association has complied with all the provisions of this chapter required to be complied with before an association shall be authorized to commence the business of banking*, the comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally *whether such association has complied with all the provisions of this chapter required to entitle it to engage in the business of banking*; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the comptroller to determine

whether the association is lawfully entitled to commence the business of banking." (Italics added.)

Section 27 provides that, on the basis of the examination provided for in Section 26, the Comptroller shall determine whether or not "such association has complied with all the provisions required to be complied with before commencing the business of banking," and if he thus finds that "such association is authorized to commence such business" he shall issue his certificate authorizing the bank to open its doors. (This is the certificate which the Comptroller has been enjoined from issuing in the present case.) Thus, Sections 26 and 27, read together, clearly provide that the Comptroller may issue his certificate on finding that the association in question has complied with "all the provisions of this chapter," that is, the National Bank Act as amended. No compliance with any provision of state law is required.

It has been consistently held that the provisions just discussed express a Congressional intention to pre-empt the field of the establishment and chartering of national banks. "[T]he National Bank Act constitutes 'by itself a complete system for the establishment and government of National Banks' ". *Deitrick v. Greaney*, 309 U.S. 190, 194 (1940). The Court was there quoting from *Cook County National Bank v. United States*, 107 U.S. 445 (1883), where it had declared:

"We consider that act [the National Bank Act] as constituting by itself a complete system for the *establishment* and government of national banks, *prescribing the manner in which they may be formed*, . . . [etc.]. Everything essential to the *formation* of the banks, the issue, security, and redemption of their notes, the winding up of the institutions, and the distribution of their effects, are fully provided for, *as in a separate code by*

itself, neither limited nor enlarged by other statutory provisions . . .” (Italics added.) 107 U.S. at 448.

In *Cook County* the Court used this reasoning to hold inapplicable to national banks certain *federal* legislation which on its face was broad enough to apply to them.³ Beyond any question whatever the Court would have held any attempted *state* interference with the formation or establishment of a national bank to be precluded by the statutory scheme enacted by Congress. To the same effect, see *Dinan v. First National Bank of Detroit*, 117 F.2d 459 (6th Cir. 1941), *cert. dismissed*, 315 U.S. 824 (1942); *Cooper v. O'Connor*, 105 F.2d 761, 763 (D.C. Cir. 1939).

It is clear, then, that Congress has pre-empted the field of the organization and chartering of national banks. In deciding whether to grant a charter the Comptroller need consider only applicable federal law; no state law can inhibit or restrict his decision to issue a charter or the authority of a national bank to which a charter has been issued from opening for business.⁴

³ The precise question was whether provisions of the bankruptcy law giving the United States, when a creditor, a priority in the assets of “any insolvent person” applied to the assets of a national bank. The Court answered the question in the negative. Other cases have held that state legislation which referred to banks generally, or to all foreign corporations, would be construed not to apply to national banks because of the constitutional problems created if the state were held to have attempted to regulate such banks. *Steward v. Atlantic National Bank of Boston*, 27 F.2d 224 (9th Cir. 1928); *Bank of America N.T. & S. Ass'n v. Lima*, 103 F. Supp. 916 (D. Mass. 1952); *Henryys v. Raboin*, 395 Ill. 118, 69 N.E. 2d 491 (1946). Since Section 3(5) of Louisiana Act 275 does not specifically refer to national banks, this Court could similarly avoid the constitutional problem in the case at bar by interpreting that section as not applying to national banks.

⁴ The situation is thus contrasted with that presented by an application to the Comptroller by an existing national bank to

Section 3(5) of the Louisiana statute thus presents us with a plain conflict between state law and federal law. The National Bank Act says that the Comptroller may issue his certificate if he finds that a national banking association has complied with all the provisions of the National Bank Act itself. Louisiana now says (as Section 3(5) of the Louisiana statute is interpreted by the appellees and by the District Court) that compliance with the National Bank Act is not enough; the Comptroller may not issue his certificate and the bank may not open for business unless it has complied with *any further requirements which may be found in the laws of the state where the bank's operations are to be located*. Either the federal law or the state law must fall, and the Supremacy Clause of the Constitution leaves no doubt as to which one must give way.

McCulloch v. Maryland, 4 Wheat. 316 (1819), upholding the right of the federal government to maintain a national banking system unimpeded by a state tax thereon, was the first of a long line of decisions holding various kinds of attempted state interference with national banks unconstitutional under the Supremacy Clause. In addition to the decisions cited above, the states have been held without power, for example, to regulate the distribution of the assets of insolvent national banks (*Davis v. Elmira Savings Bank*, 161 U.S. 275, 283 (1896)), to regulate the right of insolvent national banks to receive deposits (*Easton v. Iowa*, 188 U.S. 220 (1903)), or to prohibit national banks from using such words as "saving" or "savings" in their names or advertisement (*Franklin National Bank v. New York*, 347 U.S. 373 (1954)). In this recent case the Court said:

"There appears to be a clear conflict between the law of New York and the law of the Federal Government. We cannot resolve conflicts of authority by our judgment as to the wisdom or need of either conflicting

establish a branch. There, of course, the Comptroller is directed by 12 U.S.C. § 36(c) to take account of state law. Congress well knew how to give such a direction when it so chose.

policy. The compact between the states creating the Federal Government resolves them as a matter of supremacy. However wise or needful New York's policy, a matter as to which we express no judgment, it must give way to the contrary federal policy." 347 U.S. at 378-79.⁵

The authorities and principles which we have discussed demonstrate that a state cannot prevent a national bank from opening its doors for business, let alone prevent the Comptroller of the Currency from issuing a certificate, unless Congress by granting an exception from its preemption of the field has authorized the states to do so. Plaintiffs claimed, and the District Court held, that Congress did exactly that in Section 7 of the Federal Bank Holding Company Act of 1956. As we shall see immediately below, this argument cannot be sustained.

B. NOTHING IN THE FEDERAL BANK HOLDING COMPANY ACT GIVES THE STATES THE RIGHT TO PROHIBIT A NATIONAL BANK FROM OPENING FOR BUSINESS.

Section 7 of the Federal Bank Holding Company Act, relied upon by the District Court, reads in its entirety as follows:

"The enactment by Congress of this chapter shall not be construed as preventing any State from exercising

⁵ These principles have again been reaffirmed during the current term in *Mercantile National Bank at Dallas v. Langdeau*, 371 U.S. 555 (1963), where the Supreme Court held a state decision that a national bank could be sued in a certain state court to be inconsistent with controlling federal law. See also *First National Bank of San Jose v. California*, 262 U.S. 366 (1923); *National Bank v. Commonwealth*, 9 Wall. 353, 362 (1870); *Starr v. O'Connor, Comptroller of the Currency*, 118 F.2d 548 (6th Cir. 1941); *American Surety Co. v. Baldwin*, 90 F.2d 708 (7th Cir. 1937); *Brust v. First National Bank of Stevens Point*, 184 Wis. 15, 198 N.W. 749 (1924); 7 Michie, *Banks and Banking*, ch. 15, § 5 (1944).

such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies and subsidiaries thereof." 12 U.S.C. § 1846.

Here Congress declares in familiar language that in enacting the *Federal Bank Holding Company Act* (which is the kind of comprehensive scheme of regulation that in the absence of such a provision might well be held to pre-empt the field covered by it) it did not intend to pre-empt the field of *bank holding company regulation*. If before this enactment a state could constitutionally regulate bank holding companies, then it could thereafter continue to do so, the federal statute notwithstanding. But Section 1846 gives the states no powers of encroachment on any field which Congress had previously pre-empted.

Congress went out of its way to make this altogether clear. The Senate Report on the bill declared:

"A great deal of concern has been expressed that section 7 of this bill . . . granted new authority and powers to States over national banks in general, and respecting the stocks of national banks in particular. . . .

"In order to clarify the legislative history of section 7 [12 U.S.C. § 1846], the committee wishes to emphasize that *this Section does not grant any new authority to States over national banks*. The purpose of the section is to preserve to the States those powers which they *now* have in our dual banking system. It is always of uppermost importance in legislation of this nature to preserve the dual system of National and State banks, and section 7 must be viewed in that light." S. Rep. No. 1095 (part 2) (84th Cong., 2d Sess. 1956), p. 5. (Italics added.)⁶

⁶ Cf. also Hearings on S. 76 and S. 1118 before the Senate Committee on Banking and Currency, 83d Cong., 1st Sess., part 2 (1953), pp. 144, 204; Hearings on S. 76 and S. 1118 before the Senate Committee on Banking and Currency, 83d Cong., 2d Sess., part 3

Thus Congress in advance specifically repudiated the argument, which appellees have made throughout this litigation, that Section 1846 somehow involves a remission to the states of authority to regulate national banks which they had not theretofore had.⁷

It is essential to understand the difference between Section 3(5) and another type of legislation with which the appellees have confused it. A number of states have passed a piece of legislation which is sometimes called the "Uniform State Bank Holding Company Act." This statute is similar to the Louisiana bill as originally introduced in the legislature, before its amendment by the addition of Section 3(5). That is, the Uniform Act prohibits any new bank holding companies as defined from being organized after the effective date of the statute, and further prohibits, after such date, any additional acquisitions of bank stock by existing bank holding companies. Appellees have repeatedly referred to the Louisiana statute *as enacted* as the "Uniform State Bank Holding Company Act." This is not the fact. Section 3(5), added to the Louisiana statute, is something which no other state has ever enacted, and which raises quite different questions from those posed by the Uniform Act. Section 3(5) provides that a holding-company-owned bank not open for business on the effective date of the statute may not open for business, whether or not a charter or certificate to open for business has already been

(1954), 281-286, 311, 658; Hearings on S. 880, S. 2350, and H. R. 6227 before a Subcommittee of the Senate Committee on Banking and Currency, 84th Cong., 1st Sess. (1955), pp. 133-134, 136, 299-300, 307, 320-321.

⁷ Indeed, the references to the dual banking system in the passage just quoted indicate that Congress was not contemplating that the states could engage in "bank holding company regulation" affecting *national* banks. Congress' intent in enacting Section 1846 was, rather, to ensure that the states were not precluded from passing legislation affecting or regulating bank holding company ownership of *state* banks. Only thus, by preserving state control of state banks, could the dual banking system be preserved.

issued.⁸ In other words it does not regulate bank holding companies or the ownership or voting of bank stock held by them, but purports to forbid the opening or operation of a national bank itself.

It is only this additional provision, added after this litigation had already been commenced, which can possibly be argued to prohibit the opening of Whitney-Jefferson. Nothing in the bill as originally introduced would have prohibited it. The Act's prohibition against stock acquisitions applies only to acquisitions made after the effective date of the statute (July 10, 1962), whereas Whitney Holding Corporation acquired the stock of Whitney-Jefferson on May 24, 1962. Moreover, there is nothing in the Act which makes any attempt to require divestiture by bank holding companies of bank stock acquired (as was that of Whitney-Jefferson) prior to the effective date of the statute.

Thus, the only provision of the statute which is in any way relevant to this litigation is Section 3(5). This is the only section which appellees have ever argued is relevant, or which the District Court relied upon in its decision. And Section 3(5) is the one section of the Act which is not found in the Uniform State Bank Holding Company Act, and which attempts, not to prohibit or regulate the formation of holding companies or the acquisition of stock by them, but

⁸ It should be noted that Section 3(5), if applicable to national banks, purports to prohibit the opening of such a bank *even if* the Comptroller's certificate to commence banking had already been issued prior to the effective date of the statute. Even the State Bank Commissioner of Louisiana in effect conceded, in his brief below, that there is grave doubt whether Section 3(5) is in this respect constitutional; he said: "It is not necessary, therefore, for this court to decide whether Section 3(5) of Act 275 can constitutionally prevent a chartered national bank, authorized to commence the business of banking, from opening its door for business" (p. 17). If this purported effect of Section 3(5) is unconstitutional, as it clearly is, then the whole section must fall, as it constitutes a single integrated scheme, directed toward the opening for business of national banks.

rather the chartering and opening for business of an existing national banking association. If, therefore, Louisiana had enacted only the Uniform State Bank Holding Company Act, no claim could have been made that the opening of Whitney-Jefferson was illegal, and that bank would be in operation today. This salient fact must be continually borne in mind as appellees confuse the Louisiana statute with the State Uniform Act or quote passages in the legislative history of the Federal Bank Holding Company Act apparently favorable to the State Uniform Act⁹ as authorizations for Louisiana Section 3(5).

The District Court wholly failed to understand this important distinction between Section 3(5) of the Louisiana statute and other legislation presenting quite different problems. This confusion on the part of the Court is shown by its reliance on *Braeburn Securities Corp. v. Smith*, 15 Ill. 2d 55, 153 N.E. 2d 806 (1958), *appeal dismissed*, 359 U.S. 311 (1959), and *Opinion of the Justices*, 102 N.H. 106, 151 A.2d 236 (N.H. 1959), and the Court's statement that these cases involved statutes "similar" to Louisiana's (page 15, *supra*). These state cases are without relevance to the present situation. In both of these cases it was held that statutes constituting essentially the Uniform State Bank Holding Company Act did not violate the Federal Constitution. Neither statute contained any provision similar to Section 3(5) of the Louisiana Act. These cases thus in-

⁹ Thus the appellees argued below that some Congressmen regarded Georgia's Bank Holding Company Act as constitutional under 12 U.S.C. § 1846, and that the Georgia Act is "very similar to the Louisiana Act." (Memorandum of State Bank Commissioner in Support of his Motion for Summary Judgment, page 8.) But the Georgia statute was the Uniform State Bank Holding Company Act, and contained no provision in any way similar to Section 3(5) of the Louisiana statute. See R. 409-411. The plain fact is that, if Louisiana had enacted the Georgia statute instead of the statute which it did enact, there would be no provision in Louisiana law which even arguably could prevent Whitney-Jefferson from opening.

volved, not the question presented by this litigation—that is, whether a state may prohibit the opening for business of a national banking association—but rather the quite different question of whether a state may prohibit acquisitions of bank stock by existing or new bank holding companies.

Moreover, neither the Illinois nor the New Hampshire court focused on the question, which is a substantial one, of whether a state attempt to regulate the ownership of stock of national banking associations violates the Supremacy Clause because of the “complete system for the establishment and government of National Banks” contained in the National Bank Act. *Deitrick v. Greaney*, 309 U.S. 190, 194 (1940). Any disposition of this question would require consideration of a line of cases holding that Rev. Stat. § 5139 (1878), 12 U.S.C. § 52, which provides for the transferability of national bank stock, prevails over any provision of state law which would restrict such transferability. *E.g.*, *McClelland v. Merchants’ & Miners’ National Bank*, 77 Colo. 302, 236 Pac. 744 (Colo. 1925); see *Scott v. Pequonnock National Bank*, 15 Fed. 494 (S.D.N.Y. 1883); *Equitable Life Assurance Society v. Moore*, 29 F. Supp. 179 (E.D. Ill. 1939).¹⁰

¹⁰ In the *Braeburn* case the principal argument against the constitutionality of the statute was based on the equal protection clause of the Fourteenth Amendment. Although the Illinois court, referring to the Federal Bank Holding Company Act, stated correctly that in this statute “Congress did not manifest an intent to pre-empt the legislative field” (153 N.E.2d at 810), the court gave no consideration to whether the National Bank Act was such a pre-emption of the field of the regulation of stock ownership of national banks. An examination of the papers on file at the Supreme Court shows that, although the appellant there did assert that the Illinois statute as applied to national banks was unconstitutional under *McCulloch v. Maryland*, *supra*, the applicability of the National Bank Act was not urged. See Statement as to Jurisdiction and Briefs, U.S. Supreme Court, October Term 1958, No. 718. In these circumstances, the

But, as previously indicated, that issue need not be considered here. The holdings of the Illinois and New Hampshire cases amount, at the very most, to no more than that a state may constitutionally prohibit acquisitions of national bank stock by bank holding companies. Neither case has any bearing on whether a state may prohibit the opening of an existing national bank, because of the ownership of its stock or for any other reason. If Louisiana had enacted the statute which the Illinois court held constitutional in *Braeburn*, or the bill which the New Hampshire court said in *Opinion of the Justices* would be constitutional if enacted, *Whitney-Jefferson* could have opened for business without difficulty and the issue of a violation of state law presented in this case would never have arisen.

Let us assume *arguendo* that a state may validly prohibit future acquisitions of state or national bank stock by bank holding companies. Appellees were successful in convincing the District Court that Section 3(5) is genuine bank holding company regulation which goes no further than this in principle. But Section 3(5) is *not* mere holding company regulation. Its impact is not on the stockholders of a bank, who may be subject to the state's jurisdiction, but on a national bank itself, which as far as all essentials of its opening and operation are concerned is *not* subject to the state's jurisdiction. Section 3(5) is not automatically constitutional merely because it will have an effect on the operations of bank holding companies, or because the intent of the Legislature in passing it was to produce such an effect. There are all sorts of ways in which state legislatures might affect, regulate, or inhibit bank holding companies, but not *all* such devices are necessarily constitutional. Louisiana cannot merely enact a statute called a Bank Holding

dismissal of the appeal by the Supreme Court cannot be construed as an expression of opinion on the merits of that question.

The New Hampshire advisory opinion likewise gave no real consideration to this question. See *Opinion of the Justices*, 102 N.H. 106, 151 A.2d 236 (1959).

Company Act and claim that *ipso facto* it must be constitutional because of 12 U.S.C. § 1846. We must examine what the state statute actually does; what its direct and immediate effect is. And when we thus examine Section 3(5) of the Louisiana statute, we find that while its ultimate objective may be to prohibit the operations of bank holding companies (and therefore to "regulate" them), *Louisiana has adopted an unconstitutional means to achieve this end*. Whether a generally similar result could be achieved by constitutional means is not the question. What Louisiana has done must stand or fall on the basis of the means which Louisiana has chosen. There are very real differences between the power of a state to prevent a bank from opening or continuing to operate because of its stock ownership, and state power to control the stock ownership itself so long as the owners are within its jurisdiction.

The vice of the means chosen is that an existing national bank, which has met all the qualifications laid down by federal law for opening, has been prevented from opening. And since the national bank is a federal instrumentality performing federally protected and authorized functions (see pages 16-21, *supra*), the operation of the federal government itself has been *pro tanto* impaired. On analysis, Section 3(5) is not different in its impact on national banking authority than would be a state statute which prohibited the opening of a national bank if, for example, more than a stated percentage of its stock was held by a religious or a labor organization. Even assuming *arguendo* that the state could validly prohibit such organizations within its borders from acquiring or even owning the stock of state or national banks—itself a dubious proposition—it plainly does not follow that the state could prohibit a national bank from opening for business merely because of the existence of such stock ownership.

The District Court's theory—that state control may be extended from regulation of bank holding companies to a prohibition against operation of a national bank if a state legislature does not approve of the bank's owner-

ship—would in many cases extend state power into areas where it is even more obviously in conflict with the national banking laws than is the case here. Even if we assume that a state may validly deal with stock ownership of national banks by a bank holding company, it is going far beyond this to forbid the opening or operation of a duly chartered national bank merely because of the character of part of that ownership. Assume, for example, that this duly chartered bank was to be opened for business with a substantial minority ownership—or even a majority ownership—in the hands of stockholders other than the bank holding company. (Louisiana Act 275 defines “bank holding company” as any foreign or domestic corporation owning or controlling “25 per centum or more of the voting shares of any bank.”) Under the decision below, Section 3(5) of the state law could effectively prevent the opening of this duly authorized and chartered national bank simply because of the minority ownership of the stock of the bank by a bank holding company and without regard to the rights of the majority stockholders.

The principle established by the decision below would have other extreme consequences. For example, a number of bank holding companies in operation prior to enactment of the Federal Bank Holding Company Act of 1956 own more than 25% of the stock of national banking facilities in states other than those in which such bank holding companies are incorporated or do business. Although it seems absurd to suggest that a state could validly require a national bank doing business therein to shut its doors if it continued to be owned to the extent of 25% or more by a bank holding company, such a result would follow from the rationale of the decision below.

The difference between what Louisiana has done and a statute regulating stock ownership by holding companies—like every other state bank holding company act in existence—is by no means one of form only. If Louisiana had passed a holding company regulatory statute, even one requiring

divestiture of prior-acquired stock (which would raise grave but different constitutional questions if applied to stock in national banks), the Comptroller would have granted his certificate here and Whitney-Jefferson could have opened on schedule. Any attempted state regulation of the stock ownership of the bank, and the constitutionality of such regulation, would be a matter between the state and the bank holding company, a business corporation subject to the jurisdiction of that state. The bank would be open for business; the state attempt at regulating its ownership would not have any effect on its ability to perform the functions for which it was chartered by the federal government, and it would be performing those functions today. Thus, the difference between bank holding company regulation and what Louisiana has done here could not possibly be greater: in the one case, the bank would be in operation, and in the other case it is not.

The District Court, in its memorandum opinion, relied in part on another section of the Federal Bank Holding Company Act besides 12 U.S.C. § 1846:

“The Court finds § 1842d of said act persuasive of the degree of control that the states may bring to bear in this area. This Section essentially provides that, before an out-of-state bank holding company may come into another state and acquire an interest in a bank of that state, the state must specifically authorize it by statute” (R. 437).

We respectfully submit that Section 1842(d) illustrates the exact opposite of what the District Court thought it did. It illustrates the scope which Congress was willing to accord to state regulation of bank holding companies, not to interference in the affairs of national banks. Let us see why this is so.

The section provides that the federal authorities shall not approve an application of a bank holding company to acquire the stock of a bank in another state unless the stat-

ute law of the second state specifically authorized it. (By its terms the section is not applicable here, and was not intended to be by Congress.¹¹) Within its limited terms, however, the section adopted state law for the guidance of federal authorities in permitting acquisition of the stock of a bank by a holding company—specifically, a foreign holding company. But this is neither illustrative nor persuasive of any “degree of control which the states may bring to bear” in the affairs of national banks. For instance, it does not suggest for a moment that a state might constitutionally provide for the closing of a national bank if, contrary to Section 1842(d), stock in the bank had been acquired by a foreign holding company. As we have repeatedly insisted, it is in the regulation of bank holding companies, not national banks, that Congress has granted scope to the states. This is what Section 1842(d) illustrates.

¹¹ In the bill as introduced into the House of Representatives and as reported by the House Committee, the section corresponding to the present Section 1842(d) was much broader than the present section, in that it made state law a yardstick not only as to bank holding companies operating across state lines, but also as to such companies operating within a single state. H. Rep. No. 609 (84th Cong., 1st Sess. 1955), page 24. The Senate Committee deleted the entire section from the bill. S. Rep. No. 1095 (84th Cong., 1st Sess. 1955), Part 1, page 11. The present Section 1842(d) originated as an amendment offered on the floor of the Senate by Senator Douglas. 102 Cong. Rec. 6857 (1956). Senator Douglas did *not* seek to restore the entire broad provision which had originally been in the House bill, but only a limited part thereof, that part which dealt with bank holding companies which operated across state lines. Congress is thus specifically on record as repudiating the broad interpretation which the District Court gave to Section 1842(d) as applying, in some attenuated sense, outside the area expressly covered by its language.

**C. SECTION 3(5) OF THE LOUISIANA STATUTE VIOLATES
ARTICLE I, SECTION 10, CLAUSE 1 OF THE UNITED STATES
CONSTITUTION.**

Even were it not a nullity as an interference with a national bank, Section 3(5) of the Louisiana statute would be unconstitutional as an impairment of the obligation of contracts, in violation of Article I, Section 10, Clause 1 of the United States Constitution. The chartering of a national bank constitutes a contract between the Federal Government and the bank, and creates vested rights which a state has no power to destroy. (*Cf. State Bank of Ohio v. Knoop*, 16 How. 369 (1853).)

Indeed, the refusal to apply the Louisiana statute to the opening of Whitney-Jefferson would be consistent with the stated purpose of the Court below in issuing a preliminary injunction, *i.e.*, to maintain the status quo, and would be consistent with general principles of equity as stated in *Arkadelphia Co. v. St. Louis S.W. Ry.*, 249 U.S. 134, 145-146 (1919):

“That a course of action so clearly consistent with the principles of equity is one proper to be adopted in an equitable proceeding goes without saying. It is one of the equitable powers, inherent in every court of justice so long as it retains control of the subject matter and of the parties, to correct that which has been wrongfully done by virtue of its process.”

As heretofore and hereinafter demonstrated, Whitney-Jefferson was fully entitled to open at the time of the issuance of the temporary restraining order and preliminary injunction. The Court should and can restore Whitney-Jefferson to that position. Compare *Mitchell v. Riegel Textile, Inc.*, 259 F. 2d 954 (D.C. Cir. 1958).

II

WHITNEY NATIONAL BANK IN JEFFERSON PARISH IS NOT A "BRANCH" OF WHITNEY NATIONAL BANK OF NEW ORLEANS WITHIN THE MEANING OF 12 U.S.C. §36(c).

The branch banking provision of the national banking law, 12 U.S.C. § 36(c), provides that a national banking association may, with the approval of the Comptroller, establish branches within the state in which it is located only within the geographic limitations imposed on state banks by state law. Up until the enactment of Louisiana Act 275 on July 10, 1962, the only issue in this case was that created by appellees' original claim that the Comptroller could not legally issue his certificate to Whitney-Jefferson because the Whitney Holding program was a device to evade the restrictions of this provision of the National Bank Act, *i.e.*, that the Court should "pierce the corporate veil" and treat Whitney-Jefferson as though it were not a separate bank at all, but rather a "branch" of Whitney-New Orleans.

This argument was and is without merit. It was advanced primarily for the purpose of delaying the opening of Whitney-Jefferson until the appellees and other state banks in Louisiana could induce the Louisiana Legislature to pass Act 275. In this appellees were successful; Act 275 became law while the Comptroller was inhibited by a preliminary injunction granted in this litigation from issuing his certificate,⁴ and the District Court, upholding the applicability and validity of this newly enacted state statute, did not reach the "branch" question. Since it seems apparent, however, that appellees will urge this again here as an alternative ground for upholding the decision below, Whitney-Jefferson will set forth briefly the reasons why it believes that the argument is without substance.

**A. CONGRESS HAS DELIBERATELY CHOSEN TO REGULATE
BRANCH BANKING AND HOLDING COMPANY BANKING
DIFFERENTLY.**

In the United States three types of multiple-office banking have developed: branch banking, chain banking, and holding company banking. The distinctions between these three types of organizations are clearly recognized and universally accepted among bankers and all those connected with banking, including Congress and the regulatory agencies.

Branch banking exists when a single banking corporation conducts its operations from more than one office, *i.e.*, through branches.

In chain banking, a number of independently incorporated banks are controlled through stock ownership by the same individual or individuals.

Holding company banking exists where a controlling stock interest in two or more banks is owned by the same corporation, known as a bank holding company. (See "Branch, Chain and Group Banking," in *Banking Studies*, Board of Governors of the Federal Reserve System (1941), pages 113, 125, 130.) These different classifications of multiple-office banking are universally recognized not only throughout the banking world, but also by Congress, which has recognized the distinctions among them, and has subjected them to quite different forms of regulation. By organizing a holding company having two or more subsidiary banks it is possible to achieve some (but not all) of the advantages of branching. See Gerald C. Fischer, *Bank Holding Companies* (1961), pp. 1, 23, 138.¹²

This was, of course, one of the principal reasons Whitney-

¹² Sixteen bank holding companies operate in ten states which prohibit or limit branch banking. Nine of these holding companies own national banks, located in more than one city or county, in seven states, and a total of 49 national banks are so owned. Of these, 29 national banks are located in states which prohibit branch banking altogether. R. 339-342.

New Orleans and its stockholders decided to embark on a holding company program, which would accomplish directly and with specific statutory and regulatory approvals that which some of its competitors are doing indirectly and without such specific authority. Appellees have heretofore argued that this admitted objective renders the whole plan a violation of 12 U.S.C. § 36(c). The fact is, however, that Congress, *in spite of its recognition of the similarities between branch banking and holding company banking*, has deliberately chosen to subject the two to quite different statutory schemes. Branching is regulated by 12 U.S.C. § 36(c); in 1956 Congress, to regulate bank holding companies and their subsidiaries, enacted the Federal Bank Holding Company Act, which inaugurated a quite different system of restrictions and regulations than that applicable to branches. Finally, and most conclusive of all, Congress *refused* to include in the Federal Bank Holding Company Act a proposed provision which would have accomplished the precise result appellees seek here, that is, the subjection of holding company banking to the branch banking laws of the states.

The first statute which authorized national banks to establish branches was the McFadden Act, 44 Stat. 1224 (1927), which provided for branching within a city in states where this was permitted to state banks. This legislation was amended by the Banking Act of 1933, 48 Stat. 162 (1933). Section 23 of this Act (48 Stat. 189) permitted national banks to branch throughout a state within the geographical limits imposed on state banks by state law. With minor amendments, this section is the present branch banking statute, 12 U.S.C. § 36(c).

The legislative history of the Banking Act of 1933 is, therefore, of great importance in answering the questions whether Congress intended that the branch-banking provision could be held applicable to holding company banking. This history shows that in 1933 Congress (1) was fully aware of the characteristics of holding company banking,

(2) deliberately refrained from subjecting it to the same regulation as branch banking, and (3) formulated a quite different system of regulation to deal with it.

John W. Pole, then Comptroller of the Currency, testified at length before Congress. He declared:

“Local holding companies have been formed in many sections of the country for the purpose of bringing together a number of the banks into a single operating group. The usual procedure is for the holding company, a State corporation, to purchase a majority of the stock of several banks, one of which would be a large city bank which in effect becomes the parent bank of the group. *The management personnel of the central bank becomes in practice the responsible management for the entire group.* Through such a group system it appears to be possible to make a *close approach to a form of branch banking* whereby each operating unit leans for support upon the central bank, or upon the holding company, and receives the benefits of its moral and financial support; its prestige and good will; its extension of the wider type of banking service; and the benefits of its highly trained management.” (Italics added.) Hearings Before the House Committee on Banking and Currency Under House Resolution 141 (Group, Chain and Branch Banking), 71st Cong. 2d Sess. (1930), Vol. 1 part 1, page 5. (See also page 26.)

With this background, Congress could easily have made Section 36(c) applicable to holding company banking if it had so wished. Instead, however, it chose to make Section 36(c) *applicable only to branch banking*, and enacted a quite different set of provisions concerning holding company banking. Sections 5(c), 19 and 27 of the same Banking Act of 1933, 48 Stat. 165, 186, 191-92, impose a number of restrictions on bank holding companies. These restrictions, with a few amendments, remain in force today. 12 U.S.C. §§ 61, 161, 221a, 334, 481.

The Federal Bank Holding Company Act of 1956 and its legislative history provide an even clearer Congressional recognition of the distinction between branch banking and holding company banking. This Act (12 U.S.C. §§ 1841-1846) was passed after 18 years of Congressional study. In the early drafts of the bill which became this Act, efforts were made in both the House and the Senate (H.R. 6227 and S. 880) to make bank holding company operations subject to the restrictions on branch banking. The proposed provision read:

"Notwithstanding any other provisions of this section, no application shall be approved under this section which will permit . . . (2) any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank, except (i) within geographic limitations that would apply to the establishment of branches of banks under the statute law of such state"

This provision would have accomplished the precise result which appellees claim had been accomplished by the enactment of Section 36(c) 22 years previously. The proposed provision would have made holding company subsidiaries the equivalent of "branches" and would have prohibited them where state law prohibits branches.

This proposed provision was included in the bill as passed by the House of Representatives. Extended testimony and arguments for and against the provision were presented to the Senate Subcommittee on Banking and Currency. *Hearings before a Subcommittee of the Committee on Banking and Currency, United States Senate (Control of Bank Holding Companies)*, 84th Cong., 1st Sess., (1955), pp. 45, 47-48, 77-78, 80-82, 85, 89-90, 104-105, 107, 111, 112-129. The Senate Committee, after full consideration, reported to the Senate a bill (S. 2577) which eliminated the pro-

posed tie-in with the branch-banking law. The Committee gave its reasons for rejecting that proposal as follows:

"The committee decided against inclusion of a provision in the bill that would automatically apply State laws concerning branch banking to bank holding company operations. The purposes of branch banking laws are not identical with the purpose of this bill to control bank holding companies. Moreover, branch banking is mostly conducted by the use of depositors' funds, thus making the protection of these funds of prime importance. Bank holding companies, however, as such have no depositors. For operating funds they have recourse to equity capital supplied by their shareholders. It is believed the bill contains adequate provisions to regulate bank holding company operations without an arbitrary tie-in with branch banking laws." (Italics added.) S. Rep. No. 1095 (84th Cong., 2d Sess. 1955), Part 1, p. 11; 2 *U.S. Code, Cong. and Admin. News*, 84th Cong. 2d Sess., 1956, pp. 2492-93.

The statute as enacted omits the proposed tie-in with the branch-banking law which had been debated so exhaustively. It expressly permits the purchase of bank stock by a bank holding company upon approval by the Federal Reserve Board. The statute lists five statutory factors which the Board is to consider in deciding whether to approve or disapprove the application (12 U.S.C. § 1842 (c)). The statute conspicuously refrains from providing that the application must be disapproved if Section 36(c) would prohibit the establishment of a branch bank in the same circumstances. That proposal—which is the crux of the argument which appellees advanced on this issue below—Congress had expressly rejected.

*B. THERE ARE IMPORTANT DIFFERENCES BETWEEN A
BRANCH AND A BANK HOLDING COMPANY SUBSIDIARY.*

Notwithstanding the similarities between branches and holding company subsidiaries, a number of highly important differences remain. These differences are in part the necessary consequences of the difference in corporate form chosen, and are in part the result of Congress' decision to regulate the two devices differently. Let us consider some of the more important differences between Whitney-Jefferson, as it exists and would operate if open for business, and a hypothetical branch of Whitney-New Orleans.

(1) Charter

Whitney-Jefferson: has its own articles of association and certificate of organization and is recognized by both the Comptroller and the Federal Reserve Board as an existing separate national banking association. Whitney-Jefferson cannot open for business without a certificate of authority from the Comptroller (12 U.S.C. § 27).

A branch of Whitney-New Orleans: would not have separate articles of association, certificate of organization, or certificate of authority to open for business. If Whitney-Jefferson were really a branch, it could open for business *without* the certificate of authority to commence banking which the Comptroller seeks to issue here, and appellees' action would be meaningless.

(2) Capital

Whitney-Jefferson: has its own separate capital structure of \$650,000, consisting of \$500,000 capital, \$100,000 surplus and \$50,000 undivided profits, all of which has been paid in cash (R. 46, 114).

A branch of Whitney-New Orleans: would operate under the capitalization of Whitney-New Orleans and would have no separate capital of its own.

(3) *Directors*

Whitney-Jefferson: has its own Board of Directors consisting of eight persons properly elected by the stockholders. Only four of these men are directors of Whitney-New Orleans (R. 329, 335-337).

A branch of Whitney-New Orleans: would have no Board of Directors separate from that of Whitney-New Orleans.

(4) *Officers and Employees*

Whitney-Jefferson: the directors have elected officers for Whitney-Jefferson. Only one of these officers is also an officer of Whitney-New Orleans (R. 388). The two banks will have no other employees in common.

A branch of Whitney-New Orleans: its officers and employees would all by definition be the officers and employees of Whitney-New Orleans.

(5) *Federal Reserve Bank Stock*

Whitney-Jefferson: has subscribed in its own name and paid for \$18,000 of stock of the Federal Reserve Bank of Atlanta. Since Whitney-Jefferson is a separate bank, this is a legal requirement for Federal Reserve System membership.

A branch of Whitney-New Orleans: could not legally purchase Federal Reserve Bank stock.

(6) *Deposits and Depositors*

Whitney-Jefferson: will have its own deposits, which will be the liability of Whitney-Jefferson and of no other corporate entity, and which Whitney-Jefferson alone can invest. In bankruptcy its depositors would have claims against Whitney-Jefferson's assets and no others. Whitney-Jefferson's depositors will have no contractual right to make deposits or cash checks at Whitney-New Orleans, nor will Whitney-New Orleans' depositors have a contractual right to make deposits or cash checks at Whitney-Jefferson (R. 389-390).

A branch of Whitney-New Orleans: its deposits would be pooled with those of Whitney-New Orleans, and in bankruptcy its depositors would have claims against all assets of Whitney-New Orleans. The depositors could use the various offices of Whitney-New Orleans interchangeably for making deposits or cashing checks.

(7) *Loan Limits*

Whitney-Jefferson: the limit on the amount of any single loan by Whitney-Jefferson ("loan limit") is fixed by law at \$60,000 (Rev. Stat. § 5200 (1878), as amended, 12 U.S.C. § 84, as amended, 12 U.S.C. § 84 (Supp. III, 1959-61)). This loan limit is based solely upon Whitney-Jefferson's own capital structure (R. 389).

A branch of Whitney-New Orleans: could make a loan up to \$3,000,000, even though the loan exceeded the total deposits in the branch, since the loan limit would be based on the capital structure of Whitney-New Orleans as a whole (R. 389).

(8) *Rights of Stockholders*

The difference between branch banking and holding company banking is further emphasized by substantial distinctions between the rights of stockholders of a single national bank with many branches, on the one hand, and, on the other, those of stockholders of a registered bank holding company owning two or more separately incorporated national banks. Not only are registered bank holding companies subject to numerous restrictions imposed by the Federal Bank Holding Company Act of 1956 (12 U.S.C. § 1845) on transactions between the holding company and its subsidiaries, and between the subsidiaries themselves, but the Banking Act of 1933 imposes further restrictions on dividends which may be paid to a bank holding company's stockholders, and requires reserves of readily marketable assets (other than the bank stocks owned) to be established and maintained out of any earnings of the bank holding company in excess of 6% an-

nually of the book value of its outstanding shares (Rev. Stat. § 5144 (1878), as amended, 12 U.S.C. § 61, as amended, 12 U.S.C. § 61 (Supp. III, 1959-61)). None of this applies to a single bank having more than one branch.

C. THE RELEVANT JUDICIAL DECISIONS HAVE REJECTED APPELLEES' "BRANCH" ARGUMENT.

So far as appears, appellees' argument that a bank holding company subsidiary is a "branch" of some other bank for the purposes of 12 U.S.C. § 36(c) has been previously made in only one reported case. The Court of Appeals in that case had no difficulty in rejecting the argument. *First National Bank in Billings v. First Bank Stock Corp.*, 306 F.2d 937 (9th Cir. 1962). In that case, as in the case at bar, plaintiffs claimed that a new bank, opened as a subsidiary of a bank holding company, should be treated as a "branch" of an older and larger bank in a nearby city owned by the same bank holding company.

The court held:

"We find nothing in the agreed facts indicating that Valley is a 'branch' of Midland. What must appellants show, to establish that Valley is such a branch? They must show, that, in substance, Midland is doing business through the instrumentality of Valley, or vice versa, *in the same way as if the institutions were one.*" (Italics added.) 306 F.2d at 942.

Then, after analyzing the various connections and relationships between the two banks, the court concluded:

"It is plain to us that all of these facts, taken together, affirmatively show that Valley is not a branch of Midland. The unitary type of operation characteristic of branch banking is not present. The mere fact that First Bank Stock [the holding company which owned both banks] has power to cause Valley

to function as if it were a branch of Midland is not enough. The foregoing facts show that it has not so abused the power that it has." 306 F.2d at 943.

It is clear from this decision that a new bank is not a "branch" of an older bank merely because both are owned by the same bank holding company. It is, further, clear that operating control of two banks by the same holding company does not make either bank a "branch" of the other. 306 F.2d at 942.

In the case at bar Whitney-Jefferson has never opened for business; it is thus, of course, impossible for this Court to say that it has functioned "as if it were a branch" of Whitney-New Orleans. To the extent that a prediction as to how Whitney-Jefferson *will* function is possible, it is clear that the operating connection between Whitney-Jefferson and Whitney-New Orleans will be no greater than those found in the *Billings* case. Comparing the relations between the two banks involved here with those listed in the *Billings* opinion (306 F.2d at 942-43), we find that Whitney-New Orleans and Whitney-Jefferson have but four common directors and one common officer. Like all but one of the other banks in Jefferson Parish, Whitney-Jefferson will not be a member of the New Orleans Clearing House, and will clear checks through Whitney-New Orleans. Whitney-Jefferson will have its own vault in which to keep its cash funds, and there is no indication that any of its funds will be taken to Whitney-New Orleans for safekeeping overnight, as was the case in *Billings*. Whitney-Jefferson has as yet made no provisions for a night depository and has not rented any facilities for that purpose from Whitney-New Orleans.¹³

In the language of the Court of Appeals in *Billings*, which had considered these factors as well as some of those discussed at pages 38-42, *supra*, "it is plain . . . that

¹³ For the foregoing, see generally R. 388-390.

all of these facts, taken together, affirmatively show that . . . [Whitney-Jefferson] is not a branch of . . . [Whitney-New Orleans]. The unitary type of operation characteristic of branch banking is not present." 306 F.2d at 943. There is, moreover, no indication that it ever will be present.¹⁴

Only one case besides *Billings* has presented an issue similar to the "branch" issue in the present litigation. That case is a recent decision by this Court: *Camden Trust Co. v. Gidney*, 301 F.2d 521 (D.C. Cir.), *cert. denied*, 369 U.S. 886 (1962). The plaintiffs in that case urged that one bank should be treated as a "branch" of another because of their common control by the same stockholders. The stockholders were individuals rather than, as in *Billings* and in the present case, a holding company. The same fundamental issue is involved in all three cases: whether or not the court would disregard the corporate organization of the separate banks and find that they were operating substantially as branches. This the Court of Appeals for the District of Columbia Circuit refused to do, holding that obviously an affiliate bank was not a "branch" within the meaning of 12 U.S.C. § 36(c), and that if the law permitted results similar to branching to be achieved by indirect means, it was up to Congress to change the law if it so chose. The Court declared:

"It is not within our province to pass upon the desirability *vel non* of permitting a national bank to have an 'affiliate,' as the appellant has here used the term. If such an affiliate is to be denied status, Congress must clearly say so. It is sufficient for our disposition of the present controversy to observe that what was done was

¹⁴ In fact, because of the nature of the extensive federal regulation of banking, which entails widely divergent consequences depending on the corporate form chosen, two separately chartered banks could *never* be operated "in the same way as if the two institutions were one" without violating innumerable provisions of federal law.

within the authority conferred by existing statutes. Convinced, as we are, that 12 U.S.C. § 36 has no applicability to the situation disclosed on this record, we deem it unnecessary to consider other contentions urged upon us. Accordingly, the judgment of the District Court is *affirmed*." 301 F.2d at 525.

The present case even more clearly requires the same result. As to bank holding companies Congress has gone farther than *not* applying state branching restrictions to them; *it has specifically considered and rejected a proposal that this be done*, and has enacted a quite different regulatory scheme which it declared "contains adequate provisions to regulate bank holding company operations without an arbitrary tie-in with branch banking laws" (page 38, *supra*). Moreover, Congressional regulation of the type of affiliate involved in *Camden* does not include any prior approval of its establishment; even so, the Court of Appeals held that the establishment of the affiliate relationship there involved was not to be considered as creating a branch within the meaning of 12 U.S.C. § 36(c). In the holding company situation, of course, very thorough regulatory safeguards—declared "adequate" by Congress—exist; indeed prior approval by the Federal Reserve Board is required, and has been obtained here. For these reasons, the holding in *Camden* leads *a fortiori* to the same conclusion here.

CONCLUSION

For the foregoing reasons, the decision of the District Court should be reversed on the ground that Section 3(5) of Louisiana Act 275 (La. Rev. Stat. 6: § 1003(5)), if applied to Whitney National Bank in Jefferson Parish, is unconstitutional. For further reasons set forth above, the decision of the District Court cannot be salvaged on the basis of the "branch" issue which that Court did not decide.

The decision of the District Court should, therefore, be

reversed, and the case remanded to the District Court with instructions to dissolve the permanent injunction against appellants and to enter judgment denying appellees' motions for summary judgment and granting appellants' motions for summary judgment.

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April 9, 1963.

APPENDIX

STATUTES INVOLVED

1. Constitution of the United States, Article VI, Clause 2:

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. Constitution of the United States, Article I, Section 10, Clause 1:

"No State shall . . . pass any . . . Law impairing the obligation of contracts. . . ."

3. National Bank Act, R.S. §§ 5133, 5134, 5135, 5136, 5168, 5169, 5155(c), as amended, 12 U.S.C. §§ 21, 22, 23, 24, 26, 27, 36(c):

"§ 21. Formation of national banking associations; incorporators; articles of association.

Associations for carrying on the business of banking under this chapter may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office."

"§ 22. Organization certificate.

The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

First. The name assumed by such association; which name shall be subject to the approval of the Comptroller of the Currency.

Second. The place where its operations of discount and

deposit are to be carried on, designating the State, Territory, or District, and the particular county and city, town, or village.

Third. The amount of capital stock and the number of shares into which the same is to be divided.

Fourth. The names and places of residence of the shareholders and the number of shares held by each of them.

Fifth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of this chapter."

"§ 23. Acknowledgment and filing of certificate.

The organization certificate shall be acknowledged before a judge of some court of record, or notary public; and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall record and carefully preserve the same in his office."

"§ 24. Corporate powers of associations.

Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—. . . ." [There follow eight paragraphs of corporate powers.]

"§ 26. Comptroller to determine if association can commence business.

"Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in this chapter, and the association transmitting the same notifies the comptroller that all of its capital stock has been duly paid in, and that such association has complied with all the provisions of this chapter required to be complied with before an association shall be authorized to commence the business of banking, the comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capital, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the pro-

visions of this chapter required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the comptroller to determine whether the association is lawfully entitled to commence the business of banking."

"§ 27. Certificate of authority to commence banking.

"If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter."

. . . .

"§ 36. Branch Banks.

"The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following: . . .

. . . .

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute

law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided* That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock."

4. Bank Holding Company Act of 1956, 70 Stat. 138, as amended, 12 U.S.C. §§ 1841-1848:

"§ 1841. Definitions.

"(a) 'Bank holding company' means any company (1) which directly or indirectly owns, controls, or holds with power to vote, 25 per centum or more of the voting shares of each of two or more banks or of a company which is or becomes a bank holding company by virtue of this chapter, or (2) which controls in any manner the election of a majority of the directors of each of two or more banks, or (3) for the benefit of whose shareholders or members 25 per centum or more of the voting shares of each of two or more banks or a bank holding company is held by trustees; and

for the purposes of this chapter, any successor to any such company shall be deemed to be a bank holding company from the date as of which such predecessor company became a bank holding company. . . .

* * * *

"(c) 'Bank' means any national banking association or any State bank, savings bank, or trust company, but shall not include any organization operating under sections 611 and 612 of this title, or any organization which does not do business within the United States. 'State member bank' means any State bank which is a member of the Federal Reserve System. 'District bank' means any State bank organized or operating under the Code of Law for the District of Columbia.

"(d) 'Subsidiary', with respect to a specified bank holding company, means (1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company; or (2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or (3) any company 25 per centum or more of whose voting shares are held by trustees for the benefit of the shareholders or members of such bank holding company.

"§ 1842. Acquisition of bank shares or assets.

"(a) Prior approval of Board as necessary; exceptions.

"It shall be unlawful except with the prior approval of the Board (1) for any action to be taken which results in a company becoming a bank holding company under section 1841 (a) of this title; (2) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (3) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (4) for any bank holding company to merge or consolidate with any other bank holding company. Notwithstanding the foregoing this prohibition shall not apply

to (A) shares acquired by a bank, (i) in good faith in a fiduciary capacity, except where such shares are held for the benefit of the shareholders of such bank, or (ii) in the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after May 9, 1956 in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired; or (B) additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition.

• • • • •

“(c) Factors governing determination of application for approval.

“In determining whether or not to approve any acquisition or merger or consolidation under this section, the Board shall take into consideration the following factors: (1) the financial history and condition of the company or companies and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned, and (5) whether or not the effect of such acquisition or merger or consolidation would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interests, and the preservation of competition in the field of banking.

“(d) Limitation by State boundaries.

“Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside the State in which such bank holding company maintains its principal office and place of business or in which it conducts its principal operations unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in

which such bank is located, by language to that effect and not merely by implication.

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“§ 1845. Investments and borrowing by subsidiaries.

“(a) Securities of parent holding company or other subsidiary; collateral security; purchase of securities under repurchase agreement; loans; discount or extension of credit.

“From and after May 9, 1956, it shall be unlawful for a bank—

“(1) to invest any of its funds in the capital stock, bonds, debentures, or other obligations of a bank holding company of which it is a subsidiary, or of any other subsidiary of such bank holding company;

“(2) to accept the capital stock, bonds, debentures, or other obligations of a bank holding company of which it is a subsidiary or any other subsidiary of such bank holding company, as collateral security for advances made to any person or company: *Provided, however,* That any bank may accept such capital stock, bonds, debentures, or other obligations as security for debts previously contracted, but such collateral shall not be held for a period of over two years;

“(3) to purchase securities, other assets or obligations under repurchase agreement from a bank holding company of which it is a subsidiary or any other subsidiary of such bank holding company; and

“(4) to make any loan, discount or extension of credit to a bank holding company of which it is a subsidiary or to any other subsidiary of such bank holding company.

“Non-interest-bearing deposits to the credit of a bank shall not be deemed to be a loan or advance to the bank of deposit, nor shall the giving of immediate credit to a bank upon uncollected items received in the ordinary course of business be deemed to be a loan or advance to the depositing bank.

“(b) Exemptions.

“The provisions of this section shall not apply (1) to the capital stock, bonds, debentures, or other obligations of any company described in section 1843(c)(1) of this title, or (2) to any company whose subsidiary status has arisen out of a bona fide debt to the bank contracted prior to the date of the creation of such status, or (3) to any company whose subsidiary status exists by reason of the ownership or control of voting shares thereof by the bank as executor, administrator, trustee, receiver, agent, or depositary, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the stockholders of such bank.”

“§ 1846. Reservation of rights to States.

“The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

“§ 1847. Penalties.

“Any company which willfully violates any provision of this chapter, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than \$1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this chapter shall upon conviction be fined not more than \$10,000 or imprisoned not more than one year, or both. Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of Title 18.

“§ 1848. Judicial review.

“Any party aggrieved by an order of the Board under this chapter may obtain a review of such order in the

United States Court of Appeals within any circuit wherein such party has its principal place of business or in the Court of Appeals in the District of Columbia, by filing in the court, within sixty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive."

5. Chapter 12, Title 6, Louisiana Revised Statutes (Codified from Louisiana Act 275 of 1962)

[the section numbers in brackets indicate sections of Act 275 of 1962]:

"AN ACT

To define the bank holding company, to prohibit the formation of new bank holding companies, and to control the future expansion of existing bank holding companies and of their subsidiaries. [This is the title of the statute as enacted; the title was not codified.]

"[§ 1] § 1001. Declaration of policy.

"It is declared to be the policy of this State to protect and to foster the growth of the independent unit bank, and [sic] institution whose ownership and origins are grounded in the local community and whose activities are bound up with local economic and social organizations; to prevent the undesirable concentration of control in the banking field to the detriment of the public interest; to insure effective competition among all banking institutions; and, to accomplish these objectives by prohibiting the formation of new banking holding companies and the acquisition of control by whatever means of additional banking institutions by existing bank holding companies and by their subsidiaries.

“[§ 2] § 1002. Definitions.

“(A) Bank holding company means any company, foreign or domestic, including a bank,

“(1) which directly or indirectly owns, controls, or holds with power to vote, 25 per centum or more of the voting shares of any bank, or

“(2) which controls in any manner the election of a majority of the directors of any bank, or

“(3) for the benefit of whose shareholders or members 25 per centum or more of the voting shares of any bank or a bank holding company is held by trustees; and for the purposes of this Chapter, any successor to any such company shall be deemed to be a bank holding company from the date as of which such predecessor company became a bank holding company.

“(B) Notwithstanding the foregoing,

“(1) no company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities and which are held only for such period of time as will permit the sale thereof upon a reasonable basis, and

“(2) no company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights of shares acquired in the course of such solicitation

“(3) nor shall this Chapter apply to shares acquired by a bank holding company which is a bank, or by any banking subsidiary of a bank holding company, in satisfaction of a debt previously contracted in good faith, but such bank holding company or such subsidiaries shall dispose of such shares within a period of two years from the date on which they were acquired or from the date of enactment of this Chapter, whichever is later

“(4) nor shall this chapter apply to shares which are held or acquired by a bank holding company which is a bank or by any banking subsidiary of a bank holding company, in good faith in a fiduciary capacity; except where such shares are held for the benefit of the shareholders of such bank holding company or any of its subsidiaries, or to shares which are of the kinds and amounts eligible for investment by National banking associations under provisions

of 12 U.S.C.A. § 24, or to shares lawfully acquired and owned prior to the date of enactment of this chapter by a bank which is a bank holding company, or by any of its wholly owned subsidiaries.

“(C) Company means any corporation, business trust, partnership, association, or similar organization doing business in this State, but shall not include any corporation the majority of the shares of which are owned by the United States or by any State.

“(D) Bank means any commercial bank, savings bank, trust company or similar organization doing business in this State.

“(E) Subsidiary, with respect to a specified bank holding company, means

“(1) any company 25 per centum or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is owned or controlled by such bank holding company; or

“(2) any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or

“(3) any company 25 per centum or more of whose voting shares are held by trustees for the benefit of the shareholders or members of such bank holding company.

“(F) The term “successor” includes any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank.

“[§ 3] § 1003. Prohibitions upon acquisition of bank shares or assets.

“It shall be unlawful:

“(1) for any action to be taken which results in a company or a bank becoming a bank holding company as defined in this Chapter;

“(2) for any bank holding company or subsidiary thereof to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company or subsidiary will directly or indirectly own

or control more than 25 per centum of the voting shares of such bank;

“(3) for any bank holding company or subsidiary thereof to acquire all or substantially all of the assets of a bank; or

“(4) for any bank holding company or subsidiary thereof to merge or consolidate with any other bank holding company or any subsidiary thereof;

“(5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued. Notwithstanding the foregoing, this prohibition shall not apply to additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition.

“[§ 4] § 1004. Penalties.

“Any bank, bank holding company, company, or any subsidiary of any of them which willfully violates any provision of this Chapter, or any regulation or order issued by the State Bank Commissioner pursuant thereto, shall upon conviction be fined not less than \$500 nor more than \$1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Chapter shall upon conviction be fined not less than \$1,000 nor more than \$5,000 or imprisoned not more than one year, or both.

“[§ 5] § 1005. Administration.

“The State Bank Commissioner shall administer and carry out the provisions of this Chapter and may issue such regulations and orders as may be necessary to discharge this duty and to prevent evasions of the Chapter.

“[§ 6] § 1006. Savings clause.

“Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of any existing law, nor shall anything herein contained constitute a defense to any action, suit or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct.”

BRIEF FOR APPELLEE
LOUISIANA STATE BANK COMMISSIONER

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*

v.

BANK OF NEW ORLEANS & TRUST COMPANY, ET AL., *Appellees*

No. 17,681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*

v.

BANK OF NEW ORLEANS & TRUST COMPANY, ET AL., *Appellees*

On Appeals from the United States District Court
for the District of Columbia

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QUESTIONS PRESENTED

1. Whether the State of Louisiana, confronted with an emergency in its banking industry, had the constitutional authority, in the exercise of its police power, to enact Louisiana Act 275 of 1962, and thereby prohibit a Louisiana-incorporated bank holding company and its wholly owned subsidiary from opening for business an operation devised to frustrate and defeat the vital interests of the community and Louisiana's public policy against monopolistic branch banking and holding company operations.

2. Whether the Whitney National Bank of New Orleans, by merely changing its corporate form, could successfully circumvent and evade Section 36c of the National Bank Act and Louisiana Revised Statutes 6:54.

3. Whether the capitalization of a bank holding company with funds drawn from a national bank is prohibited by 12 U.S.C. § 1845.

4. Whether an appellant who consented to the intervention of this appellee in the District Court and who there raised no question as to his standing can be heard on appeal for the first time to contest appellee's standing.

5. Whether the Louisiana State Bank Commissioner, charged with the administration and enforcement of Louisiana Act 275 of 1962, had standing lawfully to intervene in this action when both appellees and appellants relied upon said statute in support of their claims and defenses herein.

INDEX

	Page
Questions Presented.	
Counter-Statement of the Case	1
Summary of Argument	5
Argument:	
I. The District Court Correctly Ruled that Act 275 of 1962 Is Constitutional and that It Is Applicable Here to Prevent the Comptroller from Issuing His Certificate to License an Unlawful Operation	6
II. The Proposed Banking Operation Is Also in Violation of 12 U.S.C. 1845 and Section 36c of the National Bank Act. The Comptroller Has No Discretion to License an Operation in Contravention of Federal Law Also	17
III. Appellant Comptroller Having Consented to the Intervention of the Louisiana Bank Commissioner May Not Now Contest His Standing. In Any Event, the Commissioner Has Standing in the Case at Bar	19
Conclusion	21

CITATIONS

CASES:

<i>All America Airways, Inc. v. Cedarhurst</i> , C.C.A. 2, 1953, 201 F. 2d 273	20
<i>Bank of New Orleans & Trust Co., et ano v. Federal Reserve Board</i> , (C.C.A. 5, No. 19,788)	3
<i>Braeburn Securities Corp. v. Smith</i> , 15 Ill. 2d 55, 153 N.E. 2d 806, appeal dismissed, 359 U.S. 311	12
<i>Camden Trust Co. v. Gidney</i> , 112 App. D.C. 197, 301 F. 2d 521, cert. denied, 369 U.S. 886	19
<i>Commercial State Bank v. Gidney</i> , 174 F. Supp. 770, affd. 108 App. D.C. 37, 278 F. 2d 871 (1960)	7
<i>Corn Products Ref. Co. v. Benson</i> , C.C.A. 2, 1956, 232 F. 2d 554	18

	Page
<i>Douglas v. Kentucky</i> , 168 U.S. 488	14
<i>East N.Y. Sav. Bank v. Hahn</i> , 326 U.S. 230	14, 15
<i>Ferguson, Attorney Gen. of Kansas v. Skrupa</i> , 372 U.S. 726 (1963)	16
<i>Francis O. Day, Inc. v. Shapiro</i> , 105 App. D.C. 392, 267 F. 2d 669	18
<i>Guaranty Trust Co. v. West Va. Turnpike Comm.</i> , 109 F. Supp. 286	20
<i>Home Bldg. & Loan Assn. v. Blaisdell</i> , 290 U.S. 398	14
<i>Milheim v. Moffatt Tunnel Improvement District</i> , 262 U.S. 710, 716	12
<i>Minnesota v. Benson</i> , 274 F. 2d 764 (D.C. App. 1960) ..	20
<i>Mitchell v. Singstad</i> , 23 F.R.D. 62 (D.C. Md. 1959) ..	20
<i>Opinion of the Justices</i> , 151 A. 2d 236 (N.H. 1959)	12
<i>People of California v. United States</i> , C.C.A. 9, 1950, 180 F. 2d 596	20
<i>Securities & Exchange Comm. v. U. S. Realty & Im- provement Co.</i> , 310 U.S. 434 (1960)	20
<i>Stone v. Mississippi</i> , 101 U.S. 814	14

STATUTES:

<i>Agricultural Marketing Agreement Act</i> , 7 U.S.C. 601, et seq.	21
<i>Banking Act of 1933</i> (Act of 6/16/33, c. 89; 48 Stat. 189) 12 U.S.C. 27	11, 15
12 U.S.C. 36c	2, 5, 7, 18
<i>Federal Bank Holding Company Act of May 9, 1956</i> , c. 240, 70 Stat. 133 12 U.S.C. 1841	6, 12
12 U.S.C. 1845	5, 17
12 U.S.C. 1842(d)	9, 11
12 U.S.C. 1846	3, 5, 6, 11, 12, 13, 15
<i>Rule 24 of the Federal Rules of Civil Procedure</i> ..	5, 19, 20
<i>Louisiana Act 275 of 1962</i>	3, 4, 5, 6, 11, 13, 16, 19
<i>Louisiana Rev. St. 6:54, 328</i>	2, 5

	Page
<i>Congressional Record Citations:</i>	
84th Cong., 1st Sess., p. 8021	6, 8
84th Cong., 1st Sess., p. 8176	7
84th Cong., 2d Sess., p. 6752	8
84th Cong., 2d Sess., p. 6752, 6753	8
84th Cong., 2d Sess., p. 6853	8
84th Cong., 2d Sess., p. 6857	9
84th Cong., 2d Sess., p. 6855	10
84th Cong., 2d Sess., p. 6858	10
<i>U. S. Code and Congressional News, 1956</i>	
p. 2493	9

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On Appeals from the United States District Court
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BRIEF FOR APPELLEE
LOUISIANA STATE BANK COMMISSIONER

COUNTERSTATEMENT OF THE CASE

The State Bank Commissioner of Louisiana adopts the Counterstatement of the Case contained in the brief of the other appellees herein with the following additions.

The public policy of the State of Louisiana has always been opposed to monopoly, undue concentration and destructive, unfair competition in its banking industry (J.A.

162, 163). In a long period of years, this policy, deemed vital to the economic welfare of the entire State, has been preserved and fostered by statutes, both federal and state, which made it unlawful for either national or state banks in Louisiana to open branch offices or additional banking facilities at locations beyond the limits of the Parish (county) in which their main offices were located. Because of this long-standing, well recognized legal situation and public policy, Louisiana's dual banking system has prospered and grown. There have been no known bank holding company operations in Louisiana until the present case arose.

The Whitney National Bank of New Orleans and the Comptroller of the Currency have always been fully aware of the foregoing facts (J.A. 42, 43, 278). Indeed, even in their briefs before this Court both Appellants readily concede that Whitney National Bank of New Orleans remains today absolutely prohibited by 12 U.S.C. § 36c, the National Bank Act, and La. Rev. Stat. 6:54, 328 from opening and operating any banking offices or facilities beyond the Parish of Orleans where Whitney's main office is located (Appellant Whitney's brief, p. 3; Appellant Comptroller's brief, p. 13).

Nevertheless Whitney National Bank and the Comptroller of the Currency adopted, approved and put into motion a plan expressly and admittedly intended to circumvent and evade these long standing national and state statutory prohibitions (J.A. 42, 43, 277, 278). It was envisioned that Whitney could intentionally and successfully avoid these prohibitions by the mere device of creating, through withdrawals of its capital, a holding company; which holding company would then use the funds supplied by Whitney New Orleans to open and operate a wholly owned banking subsidiary in Jefferson Parish, where Whitney was admittedly prohibited from opening additional offices or facilities.

When it became apparent that the Comptroller of the Currency was going to license this clear-cut circumvention of the laws, an emergency situation arose in the Louisiana banking industry. The State Bank Commissioner immediately requested an opinion from the Attorney General of Louisiana as to the legality of the Whitney proposal. The Attorney General ruled that "a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of its parent company" (J.A. 163, 164, 289). Three Louisiana state banks commenced this litigation against the Comptroller of the Currency, and another legal proceeding was brought to review certain actions the Federal Reserve Board had taken in the matter under the Federal Bank Holding Company Act (*Bank of New Orleans & Trust Company et ano. v. Federal Reserve Board*, C.C.A. 5, No. 19,788).

In the meantime, the Louisiana Legislature, pursuant to jurisdiction and powers reserved to the states under 12 U.S.C. § 1846, the Federal Bank Holding Company Act, passed a State Bank Holding Company Act (Act 275 of the 1962 Legislature) to meet this emergency; and in the exercise of the State's police power, to prohibit the successful culmination of this bold, purposeful attempt by the Whitney organization and the Comptroller of the Currency to defeat and circumvent Louisiana's long standing public policy and laws against monopolistic branch banking (J.A. 333, 334). This emergency was rendered extremely acute by the fact that Whitney is the largest bank by far in the entire State and already controls a major portion of the available banking business in the areas of Louisiana involved (J.A. 99, 275, 111). Its half billion dollars in resources makes it larger than the second and third next largest banks in New Orleans combined (J.A. 275).

Louisiana Act 275 of 1962 was overwhelmingly passed by both Houses of the Legislature. It was designated

Emergency Legislation by the Governor, and it thus became effective immediately on July 10, 1962. The Declaration of Policy contained in Section 1 of the Act reads as follows:

"It is declared to be the policy of this State to protect and to foster the growth of the independent unit bank, an institution whose ownership and origins are grounded in the local community and whose activities are bound up with local economic and social organizations; to prevent the undesirable concentration and control in the banking field to the detriment of the public interest; to insure effective competition among all banking institutions; and to accomplish these objectives by prohibiting the formation of new bank holding companies and the acquisition of control by whatever means of additional banking institutions by existing bank holding companies and by their subsidiaries."

Section 3(5) of the Act, admittedly aimed at protecting the public policy of Louisiana by prohibiting the successful culmination of the Whitney organization's headlong dash to get into business in circumvention of Section 36c of the National Bank Act, provides:

"It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business".

The District Court upheld this Act as constitutional and therefore permanently enjoined the Comptroller of the Currency from issuing a Certificate which would license the opening of an unlawful operation.

SUMMARY OF ARGUMENT

I. The Federal Bank Holding Company Act (12 U.S.C. 1846) reserved to Louisiana full powers and jurisdiction with respect to banks, bank holding companies and subsidiaries of bank holding companies. Under this reservation, Louisiana, confronted with an emergency in its banking industry, was constitutionally authorized, in the exercise of its police power, to enact a State Bank Holding Company Act (Act 275 of 1962) prohibiting a Louisiana corporation (the holding company) and its wholly owned subsidiary from opening for business a bank not yet open.

The enactment of this statute to protect the vital interests of the community through the State's police power does not violate the Contract Clause of the Federal Constitution.

II. The banking operation which the Comptroller of the Currency proposes to license in this case is not only violative of Act 275 of 1962, as authorized by 12 U.S.C. 1846. It is also unlawful under the Federal bank Holding Company Act itself (12 U.S.C. 1845) and Section 36c of the National Bank Act (12 U.S.C. 36(c)). Thus, the Comptroller has no discretion to issue a Certificate which would authorize the opening of a business violative of both state and federal law.

III. The State Bank Commissioner intervened in this action pursuant to the provisions of Rule 24 of the Federal Rules of Civil Procedure, and the appellants formally consented to his intervention. The District Court thereupon entered an Order making the Commissioner a party plaintiff. Appellant Comptroller, under these circumstances, cannot be heard to complain now that the Commissioner is without standing. Furthermore, the Commissioner clearly has standing in this action, where both appellants and appellees are litigating with regard to Louisiana Act 275 of 1962 and Louisiana Rev. Statutes 6:54, 328 which, by law, are to be administered and enforced by the Commissioner.

ARGUMENT

I

The District Court Correctly Ruled That Act 275 of 1962 Is Constitutional and That It Is Applicable Here to Prevent the Comptroller from Issuing His Certificate to License an Unlawful Operation.

It is difficult to perceive how Congress could have more clearly reserved to Louisiana the right to enact Act 275 of 1962 to meet the emergency which appellants foisted upon the state than by 12 U.S.C. 1846, the Federal Bank Holding Company Act. That section, boldly entitled "Reservation of Rights to States", provides:

"The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof."

As demonstrated in the brief of Appellee banks, Congress also specifically defined the word "*banks*" to include "any national banking association or any State bank"; the term "*bank holding companies*" to include "any company"; and "*subsidiaries*" also to mean "any company" with the specified stock relationship to a holding company (18 U.S.C. 1841(a),(c),(d)). Thus, under the language of the Federal statute itself, State jurisdiction was fully preserved over bank holding companies, such as Whitney Holding Corporation, which was incorporated under the laws of Louisiana, and over its subsidiary, appellant Whitney Jefferson.

The clarity of the Federal Act in this respect is not at all surprising. Congress passed that Act to regulate and control bank holding companies—not to unleash them from any and all restraints, as the appellants herein seem to contend. The Chairman of the Banking and Currency Committee described the purpose of the Act as follows (Cong. Record, 84th Cong., 1st Sess., p. 8021):

"The holding company was organized for the purpose of circumventing the banking law. The banking law in the 1920s generally did not permit any branches. There were no branches of national banks before 1927. Through the bank holding company device they circumvented the branch banking laws and accomplished something the branch banking laws had attempted to prevent We are now trying to rectify that condition."

Representative Johnson of Wisconsin joined in the House debate on the Act, and he stated (Cong. Record, 84th Cong., 1st Sess., p. 8176):

"I believe this legislation is essential to prevent a most dangerous type of monopoly, the banking monopoly. In my opinion, the bank holding company device leads to uncontrolled branch banking, resulting in an undesirable concentration of economic power."

With these purposes in mind, it would have indeed been strange if Congress had sought to regulate this form of banking monopoly and undesirable concentration of economic power at the national level while simultaneously depriving the states of their police power to deal with the same maladies at the local level. This would have been particularly unfathomable because Federal law (Section 36c of the National Bank Act) had, for a long time, made state law the measuring rod for the establishment of branches by national banks. *Commercial State Bank v. Gidney*, 174 F. Supp. 770, 774 (D.C. 1959), *affd. per curiam*, 108 App. D.C. 37, 278 F. 2d 871 (1960). It would have been especially peculiar, therefore, if Congress, by dint of the Federal Bank Holding Company Act, had deprived the States of their right to deal with "uncontrolled branch banking" through the "holding company device".

Congress, of course, did no such thing. Chairman Spence of the House Committee made it perfectly clear that the Federal Bank Holding Company Act expressly reserved to

the states "every right they have" (See Cong. Record, 84th Cong., 1st Sess., p. 8021).

When the Bill was taken up by the Senate in 1956, Senator Robertson, Chairman of the Senate Banking and Currency Committee, made it equally clear that the states were to retain their complete control over bank holding companies and their bank subsidiaries, *national and state*, within their respective jurisdictions (Cong. Rec. 84th Cong., 2nd Sess., p. 6752). Senator Robertson, referring to an earlier statement by Senator Maybank, stated:

"Now, to me, States' rights means the right of a State to choose its own course of action on a matter within its own jurisdiction and not have the Federal Government make up its mind for it. This is the positive approach. *A State should have the right to permit or prohibit branch banking, and at the same time, it should have the right to permit or prohibit the operation of bank holding companies within its borders.* Any Federal legislation which forces a State to change its policies with respect to either branch banking or holding companies would be an unwarranted interference with States rights. . . .

"Therefore, each State may, within the limits of its proper jurisdictional authority, enact legislation to regulate bank holding companies. Mr. President, as an example of the type of legislation the States may enact, I ask unanimous consent to have printed in the Record the text of a bill recently passed by the Georgia Legislature." (*Italics supplied*).

The Georgia bill printed in the Congressional Record, at pages 6752, 6753, provided for state regulation of both state and national banks.

Senator Capehart, ranking minority member of the Senate Committee, thereupon engaged in the following colloquy with Senator Robertson (Cong. Record, 84th Cong., 2nd Sess., p. 6853):

"*Mr. Capehart.* Is the object of the bill not to make certain that bank holding companies do not expand,

and that bank holding companies shall not be permitted to do that which banks cannot do? Broadly speaking, is that not what is sought to be done?

"Mr. Robertson. That is absolutely correct. . . ."

The Senate Report in support of the Federal Bank Holding Company Act specifically authorized the States to be "*more severe*", "*more restrictive*" than the Federal Act was, or regulation thereunder might be, on bank holding companies and their subsidiaries within the states' borders. At page 2493 of the U. S. Code and Congressional News, 1956, the Senate Committee report states:

"In any event, another provision of this bill expressly reserves to the States a right to be *more restrictive regarding the formation or operation of bank holding companies* within their respective borders than the Federal authorities can be or are under this bill. *Under such a grant of authority, each State, within the limits of its proper jurisdictional authority, may be more severe on bank holding companies as a class than (1) this bill empowers the Federal authorities to be, or (2) such Federal authorities actually are in their administration of this bill.* In the opinion of the Committee, this provision adequately safeguards States rights as to bank holding companies."

The Senate Committee itself, however, refused to give States "Automatic Jurisdiction" over *out-of-state* bank holding companies, desiring to acquire banks within the limits of the State. *But, this too was changed on the Senate floor!* Senator Douglas of Illinois offered the following amendment, which is now found at 12 U.S.C. 1842 (d) (See *Cong. Rec., 84th Cong., 2nd Sess., p. 6857*):

"Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which such bank holding

company maintains its principal office and place of business or in which it conducts its principal operation *unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect, and not merely by implication.*" (Emphasis supplied).

The effect of this amendment was described in a colloquy between Senators Langer, Capehart and Robertson, at page 6855 of the Congressional Record:

"Mr. Langer. Suppose there is a big holding company in Chicago and a tiny little bank in Indiana across the State line. How would the passage of the Robertson bill and the amendments affect the little bank in Indiana?"

"Mr. Capehart. It would deny the holding company the right to establish a bank in Indiana, if the law in Indiana prohibited it from doing so, or, if the law permitted it, then only if the Federal Reserve Board agreed to it. I ask the manager of the bill to correct me if I am wrong."

"Mr. Robertson. It could not move into the State if the State law prohibited it" (Emphasis supplied).

Senator Douglas explained the meaning of his amendment, at page 6858 of the Record as follows:

"I may say that what our amendment aims to do is to carry over into the field of holding companies the same provisions which already apply for branch banking under the McFadden Act—namely, our amendment will permit out-of-State holding companies to acquire banks in other states only to the degree that State laws expressly permit them; and that is the provision of the McFadden Act."

The Douglas Amendment was adopted in the Senate by a vote of 58 to 18 (Cong. Rec., 84th Cong., 2nd Sess., p. 6863).

Thus, in the final analysis, the Federal Bank Holding Company Act contains two separate provisions, expressly reserving to the States complete control over all bank holding company operations and expansions:

1. 12 U.S.C. 1842 (d), which reserves to the States the absolute right to exclude all out-of-state bank holding companies, and to prevent them from opening banks, *national or state*, within the State's borders, and

2. 12 U.S.C. 1846, which reserves to the States the right to regulate, and if required, to exclude in-state bank holding companies, or to prevent them from opening banks, *national or state*, within the State's borders.

It would be anomalous indeed if States were to have the absolute right to exclude out-of-State bank holding companies and to prevent them from opening banks—if simultaneously, the States were not to have the same power, as now exercised by Louisiana, to prevent its own “in-State” bank holding companies from opening “in-State” banks, state or national. In the light of 12 U.S.C. 1842(d), Congress has taken from the Comptroller the authority to license the opening of “out-of-State” bank holding company-owned banks, *state or national*, not authorized by state law. By 12 U.S.C. 1846, Congress has likewise removed from the discretion of the Comptroller any right to license the unlawful operation of a Louisiana bank holding company-owned bank, outlawed by Louisiana Act 275.¹

¹ Appellants contend that Section 3 (5) of Act 275 somehow collides with the National Bank Act. This argument is groundless. Act 275 prohibits evasive or “indirect” branching, while Section 36c of the National Bank Act prohibits “direct” branching, *except in accordance with State law*. Also 12 U.S.C. 27, another provision of the National Bank Act, prohibits the opening of a national bank until it is “lawfully entitled to commence business”. Thus, in effect, Act 275 supplements and strengthens the purpose and intent of the National Bank Act, as well as the Federal Bank Holding Company Act.

In the light of (a) the crystal clear language used by Congress in 12 U.S.C. 1841, 1846 and (b) the aforementioned Congressional history behind the Federal Bank Holding Company Act, it is not at all surprising, in *Braeburn Securities Corp. v. Smith*, 15 Ill. 2d 55, 153 N.E. 2d 806, appeal dismissed, 359 U.S. 311, that, when the very same contentions as those now advanced by appellants herein were made in briefs before the Supreme Court of the United States, the Supreme Court promptly dismissed the appeal *for want of a substantial federal question*. And it is wholly understandable that a substantially identical result was reached by the Supreme Court of New Hampshire in *Opinion of the Justices*, 151 A. 2d 236. The action of the Supreme Court in the *Braeburn* case is, of course, stronger than judicial affirmance of the Illinois State Bank Holding Company Act there involved. *Milheim v. Moffatt Tunnel Improvement Dist.*, 262 U.S. 710, 716 (1923).

Of special pertinence to the questions now raised by appellants before this Court was the following ruling in *Braeburn*, at 153 N.E. 2d 806, 808:

"The . . . 1957 Act . . . clearly manifests a legislative determination that future ownership and control of banks in Illinois by bank holding companies must be stopped . . .

". . . Branch banking in Illinois has been prohibited for many years. . . .

"It is clear that this prohibition could be circumvented and indirect branch banking result if, through ownership of bank stock, one or more bank holding companies could control several banks. Branch banking can be accomplished by one bank operating at several locations or by one company owning and controlling several banks variously located.

"In 1956, Congress adopted legislation regulating bank holding companies (12 U.S.C.A. § 1841, et seq.), and provided, among other things, that its action should not impair the then jurisdiction of the States, and further specifically provided that the administra-

tion of the Federal Act should be within the confines of State law, if any. The Illinois legislation, as well as legislation in New York, New Jersey, Pennsylvania and Indiana, is an acceptance of the suggestion implied in the Federal Act that the States should act if, *as a matter of policy, bank holding company legislation more restrictive than the Federal Act was desired by the States. Further, it seems clear that such State legislation could be applicable to national as well as State banks, since the Congress did not manifest an intent to pre-empt the legislative field.*"

Appellants seek to avoid the decisive effect of *Braeburn* and the aforementioned language and Congressional history of the Federal Bank Holding Company Act by contending now that 12 U.S.C. § 1846 somehow falls short in its support of Louisiana Act 275 because it "did not grant any *new* authority to States"; that it merely preserved to the States the jurisdiction and powers they *already had* in 1956, when the Federal Act was passed.² The simple answer to this contention is found in the federal statute itself. 12 U.S.C. 1846 expressly reserved to Louisiana *not only* "such powers and jurisdiction which it now has", but it also reserved to Louisiana—

"such powers and jurisdiction which it . . . *may hereafter have.* . . ."

Moreover, we must not lose sight of the fact that Louisiana, in Section 3(5) of Act 275 of 1962, was legislating principally with regard to a *Louisiana incorporated* bank holding company and its wholly owned subsidiary, which had *not yet* obtained a national bank charter and which had *not yet* opened or engaged in business as a national bank. Both were racing to get into operation before Louisiana could prohibit them. With regard to entities such as these, the law is settled that Louisiana possesses, and has always possessed under the United States Constitution, a para-

² See Comptroller's Brief, pg. 39; Whitney Brief, pg. 22.

mount police power to enact emergency legislation, if necessary, to protect and preserve the vital interests of the community (*Stone v. Mississippi*, 101 U.S. 814; *Douglas v. Kentucky*, 168 U.S. 488; *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398, 437, 444, 447, 448; *Veix v. Sixth Ward Bldg. & Loan Association*, 310 U.S. 32, 38, 39; *East New York Savings Bank v. Hahn*, 326 U.S. 230, 233).

In the *Home Building & Loan Association* case, for example, the Supreme Court held, at page 437:

"The economic interests of the State may justify the exercise of its continuing and dominant protective power *notwithstanding interference with contracts.*"

And, at page 444:

"An emergency existed in Minnesota which furnished a proper occasion for the exercise of the reserved power of the State to protect the vital interests of the community."

Finally, the Supreme Court concluded, at page 447, 448:

"We are of the opinion that the Minnesota statute as here applied does not violate the contract clause of the Federal Constitution. Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned."

In *Stone v. Mississippi* and *Douglas v. Kentucky*, the two States outlawed lotteries after issuing charters authorizing lotteries, pursuant to which the plaintiffs had entered upon such business. The Supreme Court upheld these later prohibitions as constitutional under the Contract Clause, stating, at 101 U.S. 814, 817:

"All agree the legislature cannot bargain away the police power of a State."

Finally, with regard to Louisiana's right to prohibit Whitney Holding Corporation (which owed its very existence to the corporate charter issued by Louisiana), and

its wholly owned subsidiary, Whitney Jefferson (which had never opened or operated as a national bank and was not yet authorized to commence business as a national bank under 12 U.S.C. 27), from opening for business, the rulings of the Supreme Court in the *Veix* and *East New York Savings Bank* cases, *supra*, are exceedingly cogent. In the *Veix* case, the Court stated, at pages 38, 39:

"With institutions of such importance to its economy, the State retains police powers adequate to authorize the enactment of statutes. . . .

"The rule that all contracts are made subject to this paramount authority . . . is not limited to health, morals and safety. It extends to economic needs as well."

And with regard to Louisiana's power in such cases to select the means necessary to protect the vital interests of its economy, the Supreme Court ruled in *East New York Savings Bank v. Hahn, supra*, at pages 233-235:

"Once we are in this domain of the reserved power of a State we must respect the wide discretion on the part of the legislature in determining what is and what is not necessary . . .

"It would indeed be strange if there were anything in the Constitution of the United States which denied the State the power to safeguard its people against such dangers."

In the case at bar, it would also indeed be strange if, after Congress specifically reserved to Louisiana full jurisdiction over banks, bank holding companies and subsidiaries in 12 U.S.C. 1846, the Constitution somehow prevented Louisiana from exercising its police power to safeguard the interests of its people in the face of a combined lightning attempt by the Comptroller of the Currency and the largest bank in the State admittedly to circumvent and evade existing statutory prohibitions through the creation of a holding company "device". If this were true, as ap-

pellants contend, the reservation contained in 12 U.S.C. 1846 would be meaningless and Louisiana would be stripped of its inherent, paramount police powers when they were most urgently required.

The utter fallaciousness of these contentions, however, is amply demonstrated by the Supreme Court's decision on April 22, 1963 in *Ferguson, Attorney General of Kansas v. Skrupa, d/b/a Credit Advisors*, 372 U.S. 726. In that case, Kansas, like Louisiana in the case at bar, made it unlawful for any person to engage in a particular business.³ The Supreme Court upheld the constitutionality of the statute, even as it applied to firms engaged in the prohibited business for a long period prior to enactment of the State statute. The Supreme Court ruled:

"We conclude that the Kansas Legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. . . . We refuse to sit as a 'super-legislature to weigh the wisdom of legislation' . . . *Nor are we able or willing to draw lines by calling a law 'prohibitory' or 'regulatory'* . . . The Kansas statute may be wise or unwise. But relief, if any be needed, lies not with us but with the body constituted to pass laws for the State of Kansas."

The Louisiana Bank Commissioner accordingly prays that this Court affirm the decision of the District Court and uphold as constitutional Louisiana Act 275 of 1962.

³ In *Ferguson*, the prohibited operation was "debt adjusting".

II

The Proposed Banking Operation Is Also in Violation of 12 U.S.C. 1845 and Section 36c of the National Bank Act. The Comptroller Has No Discretion to License an Operation in Contravention of Federal Law Also.

The Federal Bank Holding Company Act, at 12 U.S.C. 1845, reads in pertinent part as follows:

“From and after May 9, 1956, it shall be unlawful for a bank—

(1) to invest *any of its funds* in the capital stock, bonds, debentures, or other obligations of a bank holding company of which it is a subsidiary, or of any other subsidiary of such bank holding company. . . .

(4) to make any loan, discount or extension of credit to a bank holding company of which it is a subsidiary or to any other subsidiary of such bank holding company.”

In the case at bar, the President of Whitney National Bank of New Orleans made the following open admissions of record (J.A. 28-30):

“1. We propose to put \$350,000. of the capital funds of the Whitney National Bank into a Louisiana business corporation under the title—“Whitney Holding Corporation”. The Whitney Holding Corporation will have an authorized capital of 1,120,000 shares of no par value stock. 5,600 of these shares will be issued to the Whitney National Bank of New Orleans for the \$350,000. . . .

“6. The . . . Whitney National Bank of New Orleans will provide \$650,000. to Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish, receiving all stock therefor. . . .”

The Louisiana Bank Commissioner submits that this program of so-called “upstream financing” of a bank holding company by a bank is clearly in violation of the Federal Bank Holding Company Act itself. While there seem

to be no reported decisions involving this particular point, it nevertheless is obvious from the face of the statute itself that banks, such as Whitney National Bank of New Orleans, are prohibited from creating and operating a holding company and another holding company subsidiary with funds drawn from the parent bank.

The Louisiana Bank Commissioner also urges that the banking operation proposed to be established in Jefferson Parish is in violation of Section 36c of the National Bank Act and Louisiana Rev. St. 6:54, 328. In its brief before this Court, Appellant Whitney readily concedes, at page 3:

“The reason that Whitney-New Orleans is limited to Orleans Parish is that both Whitney-New Orleans and other New Orleans national banks are prevented by 12 U.S.C. § 36c from establishing branches outside Orleans Parish. That section provides that national banks may establish branches only within the geographic limits imposed on state banks by state law. Louisiana state banks in New Orleans . . . are prohibited from establishing branches outside Orleans Parish by La. Rev. Stat. 6:54 and 328.”

Confronted with these statutory prohibitions, Whitney nevertheless sought to evade and circumvent them through the means “of an overall plan for the operation in the Parish of Orleans and in the Parish of Jefferson (by) the Whitney organization *in holding company form*” (J.A. 380). But, “realities, in short, and not mere form must be considered by the courts”. *Francis O. Day, Inc. v. Shapiro*, 105 App. D.C. 392, 267 F. 2d 669, 673, 674. And, “the existence of a separate corporate entity should not be permitted to frustrate the purpose of a federal regulatory statute; the corporate entity must be disregarded when failure to do so would enable the corporate device to be used to circumvent a statute”. *Corn Products Refining Co. v. Benson*, 232 F. 2d 554, 565 (C.C.A. 2, 1956).

Accordingly, the Louisiana State Bank Commissioner urges further that the “realities” of the proposed banking

operation before this Court, stripped of its corporate veils and corporate *forms*, is also in violation of 12 U.S.C. 36c. When a bank openly concedes it is prohibited from doing an act directly, it should likewise be prohibited from accomplishing the same result indirectly and by evasion. Otherwise, the national and state banking laws will soon become mere statutory shells ("dead letters", as the District Court stated during oral argument below, J.A. 260).

From the foregoing, it follows that the Comptroller has no discretion to issue his certificate to authorize the opening of banking operations which are unlawful under both applicable federal and state law. *Commercial State Bank v. Gidney*, 174 F. Supp. 770, *affd.* 108 U.S. App. D.C. 37, 278 F. 2d 871; *Camden Trust Company v. Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, *cert. denied*, 369 U.S. 886.⁴

III.

Appellant Comptroller Having Consented to the Intervention of the Louisiana Bank Commissioner May Not Now Contest His Standing. In Any Event, the Commissioner Has Standing in the Case at Bar.

After Louisiana adopted Act 275 of 1962, and after the constitutionality of that statute was attacked by the appellants in the District Court, the Louisiana State Bank Commissioner moved to intervene (J.A. 346). The motion was filed pursuant to Rule 24 of the Federal Rules of Civil Procedure, which provides in pertinent part:

"Intervention

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action . . . (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action. . . .

⁴ The Court is respectfully asked to note also that the Attorney General of Louisiana has rendered an opinion declaring that the proposed operation violates Sec. 36c and Louisiana statutes enacted pursuant thereto (J.A. 161-164). The opinion is entitled to great weight. *Michigan National Bank v. Gidney*, 99 U.S. App. D.C. 134, 237 F. 2d 762, *cert. denied*, 352 U.S. 847 (1956).

“(b) *Permissive Intervention.* Upon timely application anyone may be permitted to intervene in an action. . . . (2) when an applicant’s claim or defense have a question of law or fact in common. *When a party to an action relies for ground of claim or defense upon any statute . . . administered by a federal or state governmental officer . . . the officer . . . upon timely application may be permitted to intervene in the action.* (Italics supplied)

The State Bank Commissioner is charged with the administration and enforcement of Louisiana Act 275 of 1962; and it is his statutory duty to prevent evasions of that law and the other banking laws of Louisiana (Ch. 12, Title 6, Section 1005, La. Rev. St.). Under Rule 24, therefore, the Commissioner obviously had standing to intervene, and he has standing at this time. *Securities and Exchange Commission v. United States Realty & Improvement Co.*, 310 U.S. 434, 458, 459, 460, (1960); *Guaranty Trust Co. v. West Va. Turnpike Comm.*, 109 F. Supp. 286, 294; *All America Airways, Inc. v. Cedarhurst*, C.C.A. 2, 1953, 201 F. 2d 273, 274; *Mitchell v. Singstad*, 23 F.R.D. 62 (D.C. Md., 1959); *People of the State of California v. United States*, C.C.A. 9, 1950, 180 F. 2d 596, 600; where the Court stated at pages 600, 601:

“To deny the State the right to intervene in this case would be to deny the State the right to defend those provisions of its Constitution and laws. . . .

“If a state may enact a statute, such as California has, it may appear in Court and defend that statute. California has an undoubted right to intervene to protect and assert the validity of its enactment on that subject.”

Rehearing was denied in this last mentioned case (181 F. 2d 598), and the Supreme Court denied certiorari (340 U.S. 826 (1950)).

Minnesota v. Benson, 274 F. 2d 764 (D.C. App. 1960), relied upon by appellant Comptroller, has no pertinency

whatsoever. There Minnesota sued the Secretary of Agriculture to have one of his milk marketing orders declared unlawful. This Court properly ruled that the United States, and not Minnesota, occupied the relationship of *perens patriae* to those affected by "*federal legislation*".⁵ Here, the Commissioner intervened to uphold the constitutionality of *State legislation* and to enjoin the Comptroller from licensing an operation which is patently unlawful under that same state legislation enacted by Louisiana pursuant to a reservation of rights granted by the Congress.

But, irrespective of the foregoing, when the Commissioner moved to intervene, the Comptroller and Whitney Jefferson both consented thereto (J.A. 385). The Court thereupon entered an order granting the intervention, "all parties having consented" (J.A. 385). Appellant cannot reverse his field at this time and deny to appellee the standing he conceded he had in the Court below.

CONCLUSION

The decision of the District Court should be affirmed and the Comptroller of the Currency should remain permanently enjoined from issuing his Certificate to license an operation prohibited by law.

Respectfully submitted,

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⁵ The marketing order was entered under the Agricultural Marketing Agreement Act, 7 U.S.C. 601 et seq.

BRIEF FOR APPELLEES, BANK OF NEW ORLEANS AND
TRUST COMPANY, GUARANTY BANK AND TRUST
COMPANY, BANK OF LOUISIANA IN
NEW ORLEANS

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*

v.

BANK OF NEW ORLEANS AND TRUST COMPANY; GUARANTY
BANK AND TRUST COMPANY; BANK OF LOUISIANA IN NEW
ORLEANS; J. W. JEANSONNE, STATE BANK COMMISSIONER
OF THE STATE OF LOUISIANA, *Appellees*

No. 17681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL,
Appellees

On Appeals from the United States District Court for the
District of Columbia

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United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 4 1963

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I.

QUESTIONS PRESENTED

1. The first question presented is whether the District Court correctly ruled that the Comptroller of the Currency has no discretion to issue a Certificate of Authority that will permit a bank to open and operate in a manner prohibited by law.

2. The second question presented is whether the District Court correctly ruled that the Louisiana State Bank Holding Company Act, Act 275 of the 1962 Legislature, prohibits appellant Whitney National Bank in Jefferson Parish, a wholly owned subsidiary of a Louisiana-incorporated bank holding company, from opening for business.

3. The third question presented is whether the District Court correctly ruled that the passage of the said Louisiana State Bank Holding Company Act was within the power reserved to the states under 12 U.S.C. § 1846, The Federal Bank Holding Company Act.

4. The fourth question presented is whether the District Court, having found that Section 3(5) of the said Louisiana State Bank Holding Company Act constitutionally prohibited the opening and operation of banking facilities by appellant Whitney National Bank of Jefferson Parish, correctly declined to consider whether the same operation was also prohibited by 12 U.S.C. § 36c, the National Bank Act, and Louisiana Revised Statutes 6:54.

5. In the event this Court considers it desirable or necessary to consider the validity of the proposed banking operation under the last mentioned statutes, the fifth question presented is whether 12 U.S.C. § 36c and Louisiana's branch banking prohibitions proscribe, in the circumstances of this case, the opening and operation of banking offices in Jefferson Parish, Louisiana by a Louisiana-incorporated

bank holding company and its wholly owned subsidiary, admittedly created by the Whitney National Bank of New Orleans for the sole purpose of circumventing the prohibitions of said federal and state statutes? A subsidiary question here is whether the Court, in the circumstances of this case, ought to look behind the corporate form of appellant Whitney Jefferson to determine whether it is proposed in violation of Section 36c of the National Bank Act.

INDEX

	Page
Questions Presented.	
Counter-statement of the Case	2
Summary of Argument	17
Argument:	
I. The District Court Was Obviously Correct in Ruling That the Comptroller of the Currency Has No Discretion to Issue a Certificate to License an Operation Prohibited by Law, and That Louisiana Act 275 of 1962 Constitutionally Prohibits a Louisiana Bank Holding Company and Its Subsidiary From Opening for Business a Bank Not Yet in Business on July 10, 1962, When the Act Became Law	20
II. The District Court, Having Completely Disposed of This Case Under Act 275 of 1962 and 12 U.S.C. § 1846, Correctly Declined to Determine Whether the Same Proposed Operation Was Prohibited by Other Statutes. However, It Is Crystal Clear That the Issuance of a Certificate by the Comptroller Should Also Be Permanently Enjoined, Under the Facts of This Case, as Violative of Section 36c of the National Bank Act	28
III. The District Court Correctly Ruled That Appellee Banks Have Standing To Sue	37
Conclusion	42

CITATIONS

CASES:

<i>Alabama Power Co. v. Ickes</i> , 302 U.S. 464	40
<i>Alabama Power Co. v. Federal Power Commission</i> , 68 App. D.C. 132, 94 F. 2d 601	19, 30, 40
<i>Bank of New Orleans & Trust Company, et al v. Federal Reserve Board</i> , No. 19,788, C.C.A. 5	15

	Page
<i>Braeburn Securities Corp. v. Smith</i> , 15 Ill. 2d 55, 153 N.E. 2d, 806, appeal denied 359 U.S. 311	17, 18, 19, 22, 24, 29
<i>Camden Trust Company v. Gidney</i> , 112 U.S. App. D.C. 197, 301 F. 2d 521, cert. denied 369 U.S. 886	3, 8, 17, 19, 30, 33, 34, 35, 41, 42
<i>Commercial State Bank v. Gidney</i> , 174 F. Supp. 770, 778, affd. 108 U.S. App. D.C. 37, 278 F. 2d 871 ..	17, 20, 36, 39, 41, 42
<i>Corn Products Refining Company v. Benson</i> , (C.C.A. 2) 232 F. 2d 554	30
<i>Douglas v. Kentucky</i> , 168 U.S. 488	25
<i>Federal Home Loan Bank Board v. Rowe</i> , 109 U.S. App. D.C. 140, 284 F. 2d 274	41
<i>Ferguson, Attorney General of Kansas v. Skrupa</i> . d/b/a Credit Advisors, 372 U.S. 726	26
<i>First National Bank v. First Federal Savings & Loan</i> <i>Association</i> , 96 U.S. App. D.C. 194, 225 F. 2d 33 ..	41
<i>First National Bank of Billings v. First Bank Stock</i> <i>Corp.</i> , (C.C.A. 9, 1962) 306 F. 2d 937	26, 33, 35, 36
<i>Fitzpatrick v. Commonwealth Oil Co.</i> , (C.C.A. 5) 285 F. 2d 726	30
<i>Francis O. Day, Inc. v. Shapiro</i> , 105 App. D.C. 392, 267 F. 2d 669	19, 30
<i>Home Bldg. & Loan Assn. v. Blaisdell</i> , 290 U.S. 398 ...	25
<i>Michigan National Bank v. Gidney</i> , 99 U.S. App. D.C. 134, 237 F. 2d 762 (1956) cert. denied 352 U.S. 847	36
<i>Millheim v. Moffat Tunnel Improvement Dist.</i> , 262 U.S. 710, 716-717 (1923)	24
<i>Northern Securities Co. v. United States</i> , 193 U.S. 197	30
<i>Northwest Bank Corporation v. Board of Governors</i> , <i>Federal Reserve Board</i> , 303 F. 2d 832 (C.C.A. 8, 1962)	9
<i>Opinion of the Justices</i> , 151 A. 2d 236 (N.H. 1959) ...	18, 24
<i>Stone v. Mississippi</i> , 101 U.S. 814	25
<i>Tennessee Power Co. v. T.V.A.</i> , 306 U.S. 118	40
<i>Union National Bank of Clarksburg v. Home Loan Bank</i> <i>Board</i> , 98 U.S. App. D.C. 204, 233 F. 2d 695	41, 42
<i>United States v. Lehigh Valley R. Co.</i> , 220 U.S. 257	30
<i>United States v. Reading Co.</i> , 253 U.S. 26	30
<i>Wayne Oakland Bank v. Gidney</i> , 252 F. 2d 537 (C.C.A. 6, 1958), cert. denied 358 U.S. 830	20, 36, 40

Page

<i>Wisconsin Bankers Association v. Federal Home Loan Bank Board</i> , 190 F. Supp. 90, 94 (1960), <i>affd.</i> 294 F. 2d 714 (D.C. App., 1960), <i>cert. denied</i> 368 U.S. 938	20, 37, 40
---	------------

STATUTES:

<i>Banking Act of 1933</i> (Act of June 16, 1933, c. 89 (48 Stat. 189))	
12 U.S.C. 27	28
Sec. 23, 12 U.S.C. 36	9, 18, 30, 34, 39
12 U.S.C. 36f	19, 34
<i>Bank Holding Company Act of 1956</i> (Pub. L. 511, 84th Cong., 2nd Sess.; Act of May 9, 1956)	
12 U.S.C. § 1841	23
Sec. 3, 12 U.S.C. § 1842	9, 18
Sec. 7, 12 U.S.C. § 1846	9, 10, 16, 18, 24, 26, 28, 36
12 U.S.C. § 1847	25
Sec. 9, 12 U.S.C. § 1848	14
<i>Louisiana Rev. Statutes 6:54</i>	9
<i>Louisiana Act 275 of 1962</i>	16, 17, 18, 24
Section 3(5)	25, 27, 36

CONGRESSIONAL RECORD CITATIONS:

84th Cong., 1st Session, pg. 8021	25
84th Cong., 1st Session, pg. 8038	29

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APPELLEES' COUNTERSTATEMENT OF THE CASE

The Whitney National Bank of New Orleans is the largest bank by far in the State of Louisiana (J.A. 99). It is one of the largest financial institutions in the entire southern portion of the United States (J.A. 275). For approximately 79 years, Whitney has operated its banking offices and facilities wholly within the City of New Orleans, Parish of Orleans, Louisiana (the City and Parish include the

same territorial limits). Through these operations, *admittedly and concededly still properly and constitutionally restricted by a long standing combination of Federal and Louisiana statutory law to the limits of Orleans Parish*, Whitney has grown to a position of banking dominance where it possesses—(J.A. 275)

approximately \$500,000,000—in resources

” 13,835,000—in undivided profits

” \$ 27,200,000—in its surplus account

” 39% —of the total deposits in *all* banks in Orleans Parish

” 44% —of *all* deposits of individuals, partnerships and corporations in the Parish.

Contrary to the impression sought to be conveyed by the appellants herein, Whitney National Bank today, as in the past, continues to maintain this position of dominance. It controls and possesses more deposit and loan business than the second and third largest banks in New Orleans combined (J.A. 275). It also possesses at its offices in New Orleans deposits of individuals, partnerships and corporations emanating from the east bank of the Mississippi River in Jefferson Parish (i.e., beyond the limits of Orleans Parish) in an aggregate amount *exceeding* 30% of such deposits held by *all banks* having their head offices in the same area of Jefferson Parish (J.A. 276). Governor Robertson of the Federal Reserve Board formally described the dominant position of Whitney National Bank as (J.A. 111):

“... a centralization of banking power of major proportions in individual hands, to a degree that, to my knowledge, is without parallel in the American banking system”

As stated above, both appellants (the Comptroller of the Currency and Whitney National Bank in Jefferson Parish) readily and openly concede that Whitney National Bank of New Orleans remains today, as it has been for many years

past, constitutionally and lawfully precluded by a combination of Federal and Louisiana law from opening banking offices beyond the limits of New Orleans. This concession is stated as follows, at page 3 of appellant Whitney's brief before this Court:

"The reason that Whitney-New Orleans is limited to Orleans Parish is that both Whitney-New Orleans and other New Orleans national banks are prevented by 12 U.S.C. § 36(c) from establishing branches outside Orleans Parish. That section provides that national banks may establish branches only within the geographic limits imposed on state banks by state law. Louisiana state banks in New Orleans . . . are prohibited from establishing branches outside Orleans Parish by La. Rev. Stat. 6; §§ 54 and 328."

Please see also Brief of Appellant Saxon, at page 13, where this same open concession is to be found.

Nevertheless, Whitney-New Orleans for the past several years has been exceedingly desirous of opening branch facilities in Jefferson Parish beyond the limits of New Orleans (J.A. 276). It carefully studied all of the means whereby it could possibly avoid, circumvent and evade the prohibitions of the aforesaid combination of federal and state law (J.A. 276). It specifically considered and firmly rejected the possibility of an "affiliate arrangement", such as was involved in *Camden Trust Company v. Gidney, Comptroller of the Currency*, 112 U.S. App. D.C. 197, 301 F. 2d 521, cert. denied 369 U.S. 886 (1962), a case recently resolved by a sharply divided opinion of this Court. With regard to Whitney's rejection of a Camden-type "affiliate arrangement", the President of Whitney-New Orleans, in formal testimony, put it this way (J.A. 277):

"If branch banking were permitted in Jefferson Parish, I wouldn't be here because it would be much simpler to have it by way of a branch. . . But that is not possible. We see no signs of it coming about by legislative action . . . As I say . . . we have been unwilling to go with an affiliate which we couldn't hold onto necessarily."

"It (an affiliate) doesn't become a part of our organization; it is just sort of hanging loosely. You have these conflicts of interest and it is awkward.

"The thing that makes this (the holding company approach) interesting to us is the ability to approach the branch phase of it . . ." (Italics supplied)

As indicated by that testimony, Whitney-New Orleans finally decided to try "a holding company approach", admittedly as a means of circumventing the federal and state statutory prohibitions. In this particular connection, the President of Whitney-New Orleans also testified when he later appeared before the Federal Reserve Board (J.A. 276, 277):

"Under present laws in our state, the Whitney is not permitted to establish branches outside the Parish of Orleans . . .

"The management of the Whitney National Bank has been studying and weighing alternative methods of entering Jefferson Parish . . . and to participate in the further growth of that area . . .

"The officers of the Whitney National Bank determined in 1960 that the holding company was the proper solution, provided we could put the ownership of the present Whitney National Bank of New Orleans stock into such a company and, by the use of Whitney assets, establish a bank in Jefferson Parish, which would likewise be fully owned by the holding company."

A very surprising and unusual aspect of the case in the Court below was the open, sworn admission by the Comptroller of the Currency that his office and top officials therein (including the Comptroller himself) had actually met with the President of Whitney-New Orleans and had furnished advance advice and guidance from the very outset as to how the federal and state branching statutes might be circumvented and evaded (J.A. 42, 43, 278). The Comptroller's affidavit stated (J.A. 42, 43, 278):

"... the Whitney National wished to explore with the Comptroller whatever . . . means were available

for . . . expansion into this . . . area . . . The formation of an affiliate bank was discussed and the formation of a holding company was also discussed. The bank management felt that a holding company which would own 100% of the stock of both the old bank and the new bank would be preferable to the formation of an affiliate of which the controlling stock would be held by the same persons who control Whitney New Orleans, but which, in view of the wide stock distribution of Whitney New Orleans, would invariably have a minority of stockholders who did not own stock in both banks. The existence of the minority stock interest in each bank, which did not hold corresponding shares in the other, was considered by the Whitney management to be an undesirable situation, because it could conceivably hamper the most efficient and effective day-to-day operation of the two banks. Since the same group would be managing both banks, it was thought that situations could arise in which it would be impossible for the interests of two different groups of minority stockholders to be fully protected. *For this reason, the Whitney management . . . elected to use a holding company for the purpose of establishing a . . . bank in Jefferson Parish.*

"At all times the applicable Louisiana statutes forbidding the establishment of branch offices across parish lines were fully considered . . ." (Italics supplied)

Having obtained such a favorable *ex parte* nod from the Comptroller of the Currency before proceeding with Whitney's plan to circumvent the federal and state branching prohibitions, the President of Whitney New Orleans was thus able to testify as follows when he later appeared before the Federal Reserve Board (J.A. 277):

"The Comptroller of the Currency has concurred in a program which has the effect of putting the ownership of the present Whitney National Bank stock into the Whitney Holding Corporation . . . and to the establishment of the Whitney National Bank in Jefferson Parish with funds from the present Whitney National Bank . . ." (Italics supplied)

This private advance approval by the Comptroller also caused the Whitney National Bank of New Orleans speedily to embark upon its plan for the circumvention of the statutes, and to set into motion a series of intricate corporate maneuvers, *the sole purpose* being to accomplish indirectly and by evasion that which was admittedly unlawful for it to accomplish directly, i.e. Whitney's expansion into Jefferson Parish (J.A. 278, 279). Although complicated in execution, these corporate maneuvers were simply designed to draw funds from the Whitney National Bank of New Orleans, with which to establish totally controlled banking offices and facilities in Jefferson Parish and later elsewhere in Louisiana:

First: With \$350,000 of its capital funds, Whitney National Bank of New Orleans created Whitney Holding Corporation, *a corporation organized under the laws of Louisiana.*

Second: Solely with the \$350,000 contributed by Whitney New Orleans, Whitney Holding Corporation organized a so-called "phantom bank" named Crescent City National Bank (Crescent), to which the Comptroller of the Currency agreed to issue a bank charter, knowing full well that Crescent would exist in name only, and would never engage in the banking business.¹

¹ A Federal Officer's issuance of a national bank charter to a non-existent bank, knowing well it was never intended to be opened and operated as a national bank and that its sole purpose was to eliminate dissenting stockholders of Whitney National Bank of New Orleans who did not want to participate in the evasion of federal and state laws (there were 12,145 dissenting shares out of approximately 100,000 voting on the matter), was perhaps the second most unusual, bizarre aspect of the case below. This maneuver, admittedly designed solely to eliminate dissenters (See *Appellant Comptroller's Brief, pages 13, 14*), caused a member of the Federal Reserve Board to state (J.A. 110): "In order to eliminate minority stockholders of Whitney National Bank of New Orleans and thereby to insure that Whitney Holding Corporation will be able to elect all members of the bank's board of directors, the plan before the Board includes a so-called '*phantom bank*' merger, which makes it impossible for a stockholder to retain his stock interest therein. The purpose of centralizing control of the holding company and its banks in the hands of very few individuals—perhaps only one individual—is apparent from other features of the proposal".

Third: Whitney New Orleans and Crescent, which latter entity never actually operated for an instant as a national bank (and Whitney Holding Corporation), entered into a consolidation or merger agreement, merging Whitney New Orleans into Crescent. The name of the merged bank was then immediately changed back to Whitney National Bank of New Orleans.

Fourth: Whitney National Bank of New Orleans shareholders surrendered their stock for cancellation, and accepted in exchange Whitney Holding Corporation shares, dissenting stockholders, if any, being eliminated by the purchase of their shares under provisions of the National Banking Act.² Thus, Whitney Holding Corporation thereupon owned 100% of the stock of Whitney National Bank of New Orleans, and the shareholders of Whitney National Bank of New Orleans owned 100% of the stock of Whitney Holding Corporation.

Fifth: Whitney National Bank of New Orleans then provided \$650,000 of its capital funds to Whitney Holding Corporation "with which Whitney Holding Corporation was to cause to be created the Whitney National Bank in Jefferson Parish, receiving all of its (the Jefferson Bank's) stock therefor".

In order to enable the Court to obtain more quickly a simple analysis of these corporate maneuvers promoted and put into effect by Whitney-New Orleans, appellees respectfully direct the Court's attention to the series of charts which appear in Joint Appendix (pages 281-284) diagramming each of these corporate activities.

When the time arrived for Whitney National Bank of New Orleans to obtain support from its stockholders for these corporate proposals, the President of said bank ad-

² The Court should note that holders of 12,145 shares out of 100,000 actually voted against the entire device. In fact, dissenting stockholders of Whitney New Orleans even appeared before the Federal Reserve Board to protest federal recognition of the illegal circumvention of the statutes (J.A. 83-88).

vised his shareholders in writing as follows (J.A. 31, 32, 285):

"... It is important to bear in mind that under the plan all authorized shares of the Whitney Holding Corporation will be distributed to you, the stockholders of the Whitney National Bank, in exchange for your presently held stock. *You will then own the same proportionate interest as you now have in the Whitney National Bank in all of the assets of the holding corporation, which then obviously includes all of the assets of the present Whitney National Bank.*

"We are firmly convinced, after careful consideration of the alternatives, *that your common ownership of all of the Whitney National Bank of New Orleans stock and all of the stock of a Whitney National Bank in Jefferson Parish by a holding company to be owned by you is the soundest method of pooling all of the deposits of our customers and of our capital funds for their use . . .* From the depositors' point of view, *those in the smaller bank will be assured of the same management which directs the larger one without possibility of interruption*

"By reason of the common ownership of the two banks in a holding company there can arise no conflict of interest between them as there can between *affiliated banks*. There will be no minority stockholder to be affected.³

"From the customer point of view, there will be no conflict of interest arising out of the manner in which the customer sees fit to divide his business *between the commonly owned banks in the two parishes*. *He will have the full benefits of a relationship with the large bank and its officers.*

"Because of the permanent relationship between the large and the smaller bank, the smaller one can operate safely with a smaller capitalization . . .

³ The Court's attention is directed again to the repeated rejections by Whitney New Orleans, on the ground of undesirable "conflict of interest" possibilities, of an "affiliate arrangement", such as the one upheld by this Court in *Camden Trust Co. v. Gidney*, *supra*.

"Finally, this holding company group broadens banking possibilities for the future . . . It will give metropolitan New Orleans the soundest form of banking unit *which can accumulate and pool banking resources in this community where they can be used to the greatest advantage in the further development of the entire area.*" (Italics supplied)

After its creation by Whitney National Bank of New Orleans, Whitney Holding Corporation made application to the Federal Reserve Board for approval of its acquisition of the shares of the aforementioned Crescent City corporation and Whitney National Bank in Jefferson Parish referred to above. In accordance with the requirements of 12 U.S.C. § 1842(b), the Board notified the Comptroller of the Currency of the application and sought his views (J.A. 286). Having already given his *ex parte* approval to the plan before it was put into execution, the Comptroller, in three short paragraphs of a letter to the Board, gave his full written approval of the Whitney proposal (J.A. 166, 286). The Comptroller of the Currency failed even to mention or comment upon the legality or illegality of the proposals under 12 U.S.C. § 36(c), La. Rev. Statutes 6:54, or 12 U.S.C. § 1846 (J.A. 166, 286).

This action by the Comptroller made it unnecessary for the Federal Reserve Board to hold any statutory public hearing in Louisiana on the application under the provisions of 12 U.S.C. § 1842 (*Northwest Bank Corporation v. Board of Governors, Federal Reserve Board*, 303 F. 2d 832 (CCA 8, 1962)). However, when the Board did accept a presentation of views on the application at its headquarters in Washington and when dissenting stockholders of Whitney New Orleans appeared and vehemently contested the legality of the entire proposal under federal and state law, the Board, on its own motion again wrote to the Comptroller of the Currency advising him that charges had been made that the proposals "were in violation or

circumvention of existing law" (J.A. 424). The Board then stated to the Comptroller (J.A. 424):

"In view of the bearing that these matters might have on the Board's decision on Whitney Holding Corporation's application, the Board would appreciate any comments that you may have . . ."

Appellant Comptroller of the Currency refused to comment on any of these matters (J.A. 425, 426): Instead, he replied as follows (J.A. 426):

"Other comments with respect to the legality and merits of the holding company are matters on which a previous Comptroller of the Currency has expressed himself; *therefore, further enlargement on the subject is deemed undesirable.*" (Italics supplied)

But, the record is barren of any expressions by the Appellant Comptroller's predecessor or the appellant himself regarding the lawfulness of the Whitney proposal under the applicable federal and state statutes (see J.A. 166). The fatal effect of the Comptroller's strange refusal to supply such information or comments to the Federal Reserve Board is patent when it is fully understood that the Board itself declines even to consider or rule on such matters itself, absent advice from the Comptroller (J.A. 168, 286, 287). The Board took the position in this case that all matters "*relating largely to an alleged violation of provisions of the National Bank Act*" are for the Comptroller, not the Board (J.A. 168, 286, 287).

Thus, when the Board rendered a decision on May 3, 1962 approving the application of Whitney Holding Corporation to proceed to acquire the shares in Crescent and Whitney Jefferson, it did so without even referring to 12 U.S.C. § 36(c), 12 U.S.C. § 1846 or the Louisiana law prohibiting branching by national and state banks beyond parish lines, or the effect these statutes might have had upon its decisions (J.A. 287). In fact, having received an unqualified green light from Comptroller Saxon, the Board can-

didly admitted that it was authorizing Whitney New Orleans, through a holding company device, to evade the restrictions otherwise imposed upon it by the laws (J.A. 99, 100, 287): The Board accordingly ruled (J.A. 99, 100, 287):

“Under the law of Louisiana, a bank may not establish branches outside of the parish in which its head office is situated. . . .

“In accordance with the requirement of section 3(b) of the Act, the Comptroller of the Currency was asked to submit his views and recommendations with respect to the pending application. In a letter dated October 11, 1961, Comptroller . . . recommended approval

“*The stated purpose of the proposed holding company system is to enable an organization centered about Whitney New Orleans to provide banking services not only through its existing 12 offices within the City of New Orleans but also through offices in the East Bank of Jefferson Parish. The holding company system will be under the direction of the present executive management of Whitney, New Orleans; in fact, for present purposes, the holding company itself is simply the means by which Whitney banking offices may be established and operated in East Bank. Consequently, the character of the management and the prospect of the Applicant (Whitney Holding) and its two proposed subsidiary banks may be evaluated largely on the basis of the financial history and condition, character of management, and prospects of Whitney New Orleans.*

“The financial history of Whitney New Orleans has been satisfactory. The condition of that bank is sound and its management is regarded as satisfactory. Accordingly, it is believed that the management of Applicant and Whitney Jefferson will be satisfactory and the prospects of the holding company, which *depend principally upon the prospects of Whitney New Orleans, are favorable.*” (Italics supplied).

This bald endorsement by the federal government under these circumstances of a device admittedly designed

flagrantly to circumvent and violate both federal and state law was a bit too much for Governor Robertson of the Federal Reserve Board. In a dissenting opinion, he stated (J.A. 109-111):

“Whitney National Bank of New Orleans is the largest banking institution of the City of New Orleans and the State of Louisiana. It controls in the neighborhood of 40% of the deposit and loan business of all New Orleans banks—more than the second and third largest banks combined. *The proposal before the Board of Governors would place control of this bank in Whitney Holding Corporation and thereby would overcome the effect of the branch banking laws of Louisiana, which prevent Whitney from establishing any offices outside of Orleans Parish In other words, by this means the Whitney Banking organization would escape the legal limitations that now permit it to have offices only within the City of New Orleans.*

“In my judgment, one of the basic purposes of the Bank Holding Company Act—to prevent undue concentration of banking power in holding companies—would be unjustifiably defeated by approval of the creation of a holding company system to control the predominant bank of a major metropolitan area and additional banks within that area. . . .

“... In this case, . . . banking offices affiliated with the largest financial institution in the area would be competing with small local banks, including a bank that opened for business only two months ago in the same shopping center in which it is proposed to locate one of the offices of Whitney Jefferson. The effect of the entry of Whitney Jefferson at this time could be significantly detrimental to this new bank and to another small bank with which Whitney Jefferson would directly compete. . . .”

Governor Robertson then went on to conclude (J.A. 111):

“In brief, the plan before the Board seems designed to minimize the participation of stockholders, and even of directors, in the control and management of the holding company and its subsidiary banks. *This*

appears to be the common objective. . . . Taken together, these features of the proposal reflect an arrangement by which power to direct and control the holding company system, including its banks, could be concentrated in the hands of a single individual. . . . It should not receive this Board's stamp of approval.

"The proposal before the Board would provide a vehicle for enhancing the existing high degree of banking concentration in the area and would permit a centralization of banking power of major proportions in individual hands, to a degree that, to my knowledge, is without parallel in the American banking system. For these reasons, I conclude that the creation of the proposed holding company system would be contrary to the public interest, and therefore should be denied." (Italics supplied).

In the face of this decision by the Federal Reserve Board, the State Bank Commissioner of Louisiana immediately sought an opinion from the Attorney General of Louisiana as to whether Whitney's holding company device was lawful (J.A. 289). The Attorney General issued the following written opinion, in substance (J.A. 163, 164, 289):

"There is a general principle of law that corporate entities must be disregarded where they are made the implements for avoiding a clear legislative purpose. To allow the establishment of a bank holding company to avoid and circumvent the branch banking laws of our State is, in our opinion, prohibited, if not by the letter, by the spirit of our law.

"It is the opinion of this office, therefore, that a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of the parent company."

The Louisiana State Bank Commissioner thereupon sent a copy of this opinion by the Attorney General to the Federal Reserve Board (J.A. 165). He requested a rehearing (J.A. 165). Other of the appellees herein also peti-

tioned for reconsideration (J.A. 167). The Board refused to reconsider the matter, stating that the questions raised "relate largely to an alleged violation of provisions of the National Bank Act, which is administered by the Comptroller of the Currency" (J.A. 168).

Said ruling by the Board was subject to judicial review, upon the filing of a petition with the Fifth Circuit Court of Appeals *within 60 days after May 3, 1962* (12 U.S.C. § 1848; J.A. 288). Upon such review, the Court under the Federal Bank Holding Company Act, has jurisdiction

"to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the Court deems proper."

And, of course, the Comptroller of the Currency had previously decided that he would not issue a certificate to enable Whitney National Bank in Jefferson Parish to open or commence banking operations until final approval of all steps in the Whitney Plan had been obtained "as required by the Bank Holding Company Act." (J.A. 288).

However, before such approval could possibly become final under that Act (12 U.S.C. § 1848), or under the Regulations of the Federal Reserve Board itself, the Comptroller of the Currency, on May 18, 1962 (just 15 days after the Federal Reserve Board acted) announced gratuitously that he had already approved the program also and had directed that steps therein proceed "on or after May 24, 1962" (21 days after the Federal Reserve Board acted) (J.A. 34). By June 20, 1962, Comptroller Saxon was further announcing that absent the granting of an injunction by the District Court in the case below, he would consider it his "duty . . . to issue a Certificate of Authority to Whitney Jefferson. . . ." as soon as "the organizers . . . faithfully executed all steps and fulfilled all requirements necessary for the organization of a new bank" (J.A. 47, 289).

Accordingly, the Complaint in the instant action was filed on June 9, 1962 (J.A. 6, 289). Defendant Comptroller, upon being advised of the filing, voluntarily agreed to withhold issuance of his Certificate of Authority to Whitney Jefferson until the Motion for Preliminary Injunction herein could be determined (J.A. 289). Two of the appellees herein also timely filed in the Fifth Circuit Court of Appeals a petition to review the ruling of the Federal Reserve Board (*Bank of New Orleans and Trust Company et al. v. Board of Governors of the Federal Reserve System*, No. 19, 788, C.C.A. 5). That case will come on for argument on June 5, 1963. In the meantime, and without any fault of appellees contributing thereto, appellant Saxon suddenly refused any longer voluntarily to withhold the issuance of his Certificate (J.A. 174-191, 289).

The parties accordingly appeared before the District Court (Judge Hart), and after a hearing, the Court granted a Temporary Restraining Order directing the Comptroller to withhold his certificate until July 6, 1962, when the Motion for Preliminary Injunction could be heard (J.A. 176, 177, 289).

The Motion for Preliminary Injunction came on to be heard on July 6, 1962 before Judge Holtzoff (J.A. 225-273). During these proceedings Judge Holtzoff stated it seemed clear "that what the Whitney National Bank was doing was trying to establish what in essence, though not in form, was a branch bank." (J.A. 257). The Court stated further "if this device is legal, then you might as well repeal Section 36(c)" (J.A. 260). The Court was also advised by counsel for Appellants that Louisiana was then considering remedial emergency legislation, which would become law "on Monday" (3 days hence) and which would clearly prevent a Louisiana Bank holding company and its subsidiaries from opening for business a bank not yet open (J.A. 264). The Court replied that it was "not going to rush the matter in order to prevent an action on the

part of Louisiana or any other state legislature" (J.A. 264). The Court also stated that because of the appeal pending in the Fifth Circuit, the status quo should also properly be preserved until the cases could be heard fully on their merits (J.A. 260, 261). Finally, the Court granted the preliminary injunction, ruling (J.A. 272, 273):

"Without expressing any opinion as to the legality of the proposed action, the Court, nevertheless, is of the opinion that a sufficiently debatable question is presented to make it desirable to maintain the status quo until the action can be determined on the merits."

As indicated, since late May, 1962, the State of Louisiana, never before confronted with the monopolistic plague of bank holding company operations but now confronted with a sudden, totally unexpected, arbitrary federal administrative approval of what was considered a brazen attempt by the largest bank in the State to circumvent and evade the prohibitions of federal and state branching statutes merely through the device of a holding company intermediary, had been considering, in its House and Senate, emergency legislation authorized to the States by the reservation contained in 12 U.S.C. § 1846. This legislation, Act 275 of 1962, was passed by the House on June 27, 1962, by vote of 80 to 16 (J.A. 333, 334). It passed in the Senate on July 4, 1962, and was signed into law on July 10, 1962, *the same day on which the Preliminary Injunction herein was signed by the District Court* (J.A. 295, 296, 221). This Act, at Section 3(5) and as here pertinent, provided:

"It shall be unlawful . . . (5) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business. . . ."

All parties thereupon moved for summary judgment. It was also then stipulated and agreed that "the issue of the alleged violation of Louisiana Act 275 of 1962 is to be treated in all respects as raised in the pleadings herein"

(J.A. 384, 385). In other words, the parties agreed that the District Court should properly determine whether Act 275 of 1962 effectively precluded the Comptroller from issuing a Certificate to Whitney Jefferson, in addition to the other Section 36c issues theretofore raised.

The Appellants thereupon attacked Act 275 of 1962 as unconstitutional. The Louisiana State Bank Commissioner accordingly moved to intervene (J.A. 346, 347). All parties consented to his intervention (J.A. 385). The Court thus granted his Motion and added him as a plaintiff (J.A. 385, 386).

After extensive argument, the District Court (Judge McLaughlin) granted appellees' cross-motions for summary judgment (J.A. 435-438). The two appeals subsequently ensued.

SUMMARY OF ARGUMENT

I. (a) The District Court was patently correct in ruling that the Comptroller of the Currency has no discretion to issue a Certificate of Authority licensing an operation prohibited by law. *Commercial State Bank v. Gidney*, 174 F. Supp. 770, 778, aff'd. 278 F. 2d 871 (D.C. App. 1960); *Camden Trust Co. v. Gidney*, 301 F. 2d 521 (D.C. App.), cert. denied 369 U.S. 886 (1962). The Court was also correct in finding that Louisiana Act 275 § 3(5) of 1962 which made it "unlawful for any bank holding company or subsidiary thereof to open for business any bank not now opened for business' . . .", was directly applicable to appellant Whitney-Jefferson, and its parent, the Louisiana-incorporated Whitney Holding Corporation; and thus that the Comptroller had no discretion to issue a Certificate authorizing the commencement of operations expressly outlawed by such statute.

(b) The District Court was also correct in finding Section 3(5) of Louisiana Act 275 of 1962 constitutional on the authority of *Braeburn Securities Corp. v. Smith*, 153 N.E.

2d 806, appeal dismissed for want of a substantial Federal question, 359 U.S. 311 (1959) and *Opinion of the Justices*, 151 A. 2d 236 (N.H. 1959), which upheld the Constitutionality of similar state bank holding company statutes; and that the enactment by Louisiana of that law to preclude the imminent and threatened opening and establishment of monopolistic bank holding company operations, spawned as a means of circumventing the existing federal and Louisiana branch bank statutes and defeating Louisiana's long standing public policy against undesirable concentration of control in the banking field, was within the power expressly reserved to the States by Congress under 12 U.S.C. § 1846, the Federal Bank Holding Company Act.

(c) The Louisiana statute is not in conflict with the National Bank Act. It is directed against *Louisiana-incorporated* bank holding companies and their subsidiaries. In the case at bar, Whitney Jefferson does not become a national bank until the Comptroller of the Currency issues his Certificate authorizing it to open for business and to commence banking operations. And, since the Comptroller has no discretion to charter a national bank for an unlawful purpose or to enable it to engage in unlawful operations, the Louisiana Statute, in the case at bar, was constitutionally applicable to Whitney Holding Corporation and Whitney Jefferson *before* the latter became a national bank. There is accordingly no merit whatsoever to appellants' arguments that the Louisiana Act impairs or prevents valid national bank operations. In any event, however, Congress has left the States free to regulate bank holding company subsidiaries within their borders, whether they be national or state banks (12 U.S.C. § 1841, 1846). Hence, even if it could be presumed that Whitney Jefferson had reached the status of a 'national bank', the Comptroller is still without discretion to issue his charter in violation of a Louisiana statute enacted pursuant to the authority reserved to the states by Congress.

II. Having disposed of the case under 12 U.S.C. § 1846 and Louisiana Act 275 of 1962, the District Court cor-

rectly declined to go further and consider whether (a) 12 U.S.C. § 36(e). by its terms, proscribes in these circumstances the licensing of the type of banking operations here involved, or (b) secondly, if not proscribed by the letter of the statute, whether the Court should look beyond the corporate form of the new bank to determine whether or not it is in violation of Section 36(c).

However, it is equally clear that Whitney's open and flagrant attempt to establish additional offices (as the Federal Reserve Board described them (J.A. 100)) in Jefferson Parish, simply by means of changing its corporate form or organization and with \$650,000 drawn from the capital funds or undivided profits of Whitney New Orleans, is violative of both the letter and spirit of 12 U.S.C. 36c, f also. This Court has consistently ruled that the corporate entity must be disregarded when failure to do so would enable the corporate device to be used to circumvent a statute (*Alabama Power Company v. Federal Power Commission*, 68 App. D.C. 132, 947 F. 2d 601, 618; *Francis O. Day, Inc. v. Shapirc*, 105 App. D.C. 392, 267 F. 2d 669).

Moreover, the establishment of "additional offices" by Whitney squarely falls within the definition of "branch" contained in 12 U.S.C. 36f., and accordingly, these offices are within the prohibition of the federal and Louisiana Statutes.

Finally, appellees also contend that this Court's recent decision in *Camden Trust Co. v. Gidney*, *supra*, likewise directs that the mere corporate device, adopted by Whitney in this case to establish additional offices and to circumvent the law, be ignored; again, with the result that the Comptroller was properly enjoined from licensing the operation. Whitney New Orleans *expressly and repeatedly rejected* the "affiliate" type bank approved by a divided opinion of this Court in *Camden*. It was considered "too loose", "too awkward" and fraught with possible "conflicts of interest" between the two banking offices. Furthermore, in *Camden*, a completely new, independent bank was estab-

lished with "fresh capital", i.e. the organizers of the "affiliate" in *Camden* had to raise \$517,500. in brand new, independent capital in order to open the bank in issue there. Here, no new or fresh capital is involved. Whitney New Orleans, desirous of opening a branch through a holding company device, simply funneled \$650,000 of its own funds through the holding company into Whitney Jefferson. No individuals were "committing their capital", as in *Camden*. All of the money here was siphoned directly from Whitney New Orleans, and the corporate structure, control, and management of the two banking offices were not independent of one another.

III. Plaintiff banks clearly have standing to sue (*Commercial State Bank v. Gidney*, 174 F. Supp. 770, *aff'd* 108 U.S. App. D.C. 37, 278 F. 2d 871; *Wayne Oakland Bank v. Gidney*, 252 F. 2d 537 (CCA6, 1958), *cert. denied* 358 U.S. 838; *Wisconsin Bankers Association v. Federal Home Loan Bank Board*, 190 F. Supp. 90, 94 (1960), *aff'd*. 294 F. 2d 714 (D.C. App. 1960), *cert. denied* 368 U.S. 938, rehearing denied, 368 U.S. 979 (1961)).

ARGUMENT

I.

The District Court Was Obviously Correct in Ruling That the Comptroller of the Currency Has No Discretion to Issue a Certificate to License An Operation Prohibited By Law, and That Louisiana Act 275 of 1962 Constitutionally Prohibits a Louisiana Bank Holding Company and Its Subsidiary From Opening for Business a Bank Not Yet in Business on July 10, 1962, When the Act Became Law

It is settled in the District of Columbia Circuit that the Comptroller of the Currency has no discretion to issue a Certificate to license an operation prohibited by law (*Commercial State Bank of Roseville v. Gidney, supra*; *Camden Trust Co. v. Gidney, supra*). Thus, when the District Court found Section 3(5) of Louisiana Act 275 of 1962 to be constitutionally applicable to prohibit Whitney Holding

Corporation, a *Louisiana corporation*, and its wholly owned subsidiary, appellant Whitney National Bank in Jefferson Parish, from opening for business a bank not chartered or in business on July 10, 1962 (when the Act became law), it was patently correct for Judge McLaughlin permanently to enjoin the Comptroller from issuing a Certificate.

Louisiana Act 275 of 1962 (Ch. 12, Title 6, Sections 1001-1006, Louisiana Revised Statutes) was enacted pursuant to 12 U.S.C. § 1846, 70 Stat. 133, the Federal Bank Holding Company Act, which provides:

“Reservation of rights to States—The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.” (Italics supplied)

Congress carefully prescribed, in the Federal Bank Holding Company Act itself, exactly the types of entities over which it meant to reserve powers and jurisdiction to the States. At 12 U.S.C. § 1841(a), (c) and (d), 70 Stat. 133, it specifically defined the words “*bank*”, “*bank holding company*” and “*subsidiary*”, which are the entities over which “*powers and jurisdiction*” were reserved to the states. “*Bank*” was defined to mean “*any national banking association or any State bank, savings bank or trust company*”. Thus, from the very beginning, Congress itself reserved to the States the very definite and express right to exercise their powers and jurisdiction over *national banking associations* through the medium of State Bank Holding Company statutes.

Congress went further. It defined “*subsidiary*” of a bank holding company (such as appellant Whitney Jefferson) to mean “*any company*”, 25% or more of whose voting shares are owned or controlled by such bank holding company. Congress was even more specific. At 12 U.S.C.

§ 1841(b), it even defined the word "company". This term was given its usual meaning, i.e. "any corporation, business trust, association or similar organization".

Consequently, it is difficult, indeed impossible to fathom any logic or reasoning that could possibly underlie appellants' contentions that State Bank Holding Company statutes, enacted pursuant to the reservation of states rights contained in 12 U.S.C. § 1846, cannot validly or constitutionally apply to national banks because Congress has preempted the field. (See Appellant Saxon's brief, page 23.) On the contrary, Congress laboriously preserved and opened the field of local jurisdiction over bank holding companies and their bank subsidiaries to the States.

If there could possibly be any doubt about this under the language of the Federal Bank Holding Company Act itself, that doubt was certainly thoroughly dissipated by *Braeburn Securities Corp. v. Smith*, 15 Ill. 2d 55, 153 NE 2d 806 (1958), appeal dismissed for want of a substantial federal question, 359 U.S. 311, and *Opinion of the Justices*, 151 A. 2d 236 (N.H.). In *Braeburn*, Illinois passed the State Bank Holding Company Act of 1957 (Ill. Rev. Stat., C 16½, §§ 71-76 (1961)), a statute very similar in purpose, language and effect to Louisiana Act 275 of 1962. Braeburn Securities Corporation brought suit in the Illinois courts, contending precisely as appellants herein now contend, that the Illinois statute was (a) unconstitutional and (b) void, insofar as it applied to national bank subsidiaries of a holding company. The Illinois Supreme Court upheld the statute as constitutional, and as a proper State regulation of national banks under the Federal Bank Holding Company Act (12 U.S.C. § 1846). The Court ruled at page 808 et seq.:

"The brief summary of the 1957 Act . . . clearly manifests a legislative determination that future ownership and control of banks in Illinois by bank holding companies must be stopped. . . .

"Banking is a business peculiarly affected with a public interest. Local autonomy of banks serving the individual and commercial needs of a community has been . . . the policy of this State since the 1929 amendment to the Illinois Banking Act . . . enacted following the passage by Congress of the McFadden Act which, in effect, permitted the states to determine whether State or national banks operating within a State might maintain branches. Branch banking in Illinois has been prohibited for many years.

"It is clear that this prohibition could be circumvented and indirect branch banking result if, through ownership of bank stock, one or more bank holding companies could control several banks. Branch banking can be accomplished by one bank operating at several locations or by one company owning and controlling several banks variously located.

"In 1956, Congress adopted legislation regulating bank holding companies (12 U.S.C.A. § 1841, et seq.), and provided, among other things, that its action should not impair the then jurisdiction of the States, and further specifically provided that administration of the Federal Act should be within the confines of State law, if any. *The Illinois legislation, as well as legislation in New York, New Jersey, Pennsylvania and Indiana, is an acceptance of the suggestion implied in the Federal Act that the States should act if, as a matter of policy, bank holding company legislation more restrictive than the Federal Act was desired by the States. Further, it seems clear that such State legislation could be applicable to national as well as State banks, since the Congress did not manifest an intent to pre-empt the legislative field.*" (Italics supplied)

The Court ruled further, at page 811:

"The classifications provided in this Act are thus clearly based on a reasonable basis, and constitute no special legislation, deny no equal protection of laws, and grant no privilege or immunity in effecting such classification, in violation of constitutional provisions

...

"The public policy of Illinois prohibits branch banking, and this Act merely regulates these . . . companies to limit further encroachment on that prohibition."

The decision in *Opinion of the Justices, supra*, was to the very same effect.

When the *Braeburn* case reached the Supreme Court of the United States, Braeburn contended, precisely as appellants do before this Court (See Docket No. 718, October, 1958 Term, Supreme Ct.)—

1. That the Illinois Bank Holding Company Act was unconstitutional on essentially the same grounds as those asserted now by appellants, and

2. That the Illinois Act was void in that it attempts to regulate, interfere with and control national bank subsidiaries of holding companies. In this connection, Braeburn argued in its brief, almost identically to appellants here:

"Ever since McCulloch v. Maryland, 4 Wheat. 316—Jurisdiction over internal affairs of national banks was exclusively in the Federal government, and any State law which undertook to limit or control such banks is void . . ."

The State Auditor of Illinois thereupon filed a motion to dismiss Braeburn's appeal *for want of a substantial federal question*. He contended Illinois had the right to regulate or prohibit bank holding companies or their national bank subsidiaries under 12 U.S.C. § 1846. The Supreme Court of the United States, in a per curiam opinion in 1959 (359 U.S. 311), granted the motion to dismiss on the ground that the case failed to present a substantial federal question. Dismissal on that ground, of course, is an action even stronger than judicial affirmance. *Milheim v. Moffat Tunnel Improvement Dist.*, 262 U.S. 710, 716-717 (1923).

Thus, instead of violating the Supremacy Clause of the United States Constitution, Louisiana Act 275 of 1962 was

enacted strictly in pursuance of the express grant or reservation of "states rights" contained in a Federal statute, which statute specifically included national banks within the ambit of that reservation of authority.

Appellants seek to contend that Section 3(5) of Act 275 is unconstitutional because it prohibits a Louisiana-incorporated bank holding company and its wholly owned subsidiary from opening for business a bank not yet open. This contention loses sight of the fact that Louisiana, within the scope of its police power, has the Constitutional right to prohibit any Louisiana-incorporated bank holding company and its wholly owned subsidiaries from opening or engaging in any business which endangers the vital interests of its people. (*Stone v. Mississippi*, 101 U.S. 814; *Douglas v. Kentucky*, 168 U.S. 488; *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 437, 444, 447) It loses sight of the fact that such enactment was passed, not only to guard the public policy of Louisiana but in strict pursuance of the public policy of the United States, as expressed in the Federal Bank Holding Company Act, and the Congressional purpose behind it. The Federal Bank Holding Company Act, like the Louisiana law, contains severe penal provisions (fine, imprisonment, or both) for any violations of the statutes (12 U.S.C. § 1847). When the Federal Act was before the House of Representatives, Chairman Spence of the House Banking and Currency Committee, floor manager of the Bill, stated the purpose of the Act as follows:

"The holding company was organized for the purpose of circumventing the banking law. The banking law in the 1920's generally did not permit any branches. There were no branches of national banks before 1927. Through the bank holding company device they circumvented the branch banking laws and accomplished something the branch banking laws had attempted to prevent. . . .

"This is not a harsh bill. It is a bill that I think will accomplish what we want with little punishment to those who have violated the spirit of the law for

over 25 years. No individual or corporation can by prescription obtain a right *which is against the public policy of this country.*

"They say 'We have been in this business for a long time, and you have not prevented us from doing these things.' *They have no right because of the passage of time to continue to do something that is against the public welfare and the public policy of the country. We are now trying to rectify that condition.*" (Italics supplied)

Indeed, in *First National Bank in Billings v. First Bank Stock Corporation* (C.C.A. 9, 1962), 306 F. 2d 937, a case strenuously relied on by appellants, it was expressly stated that in instances where bank holding companies were known to be trying to defeat the public policy by racing to get into business before legislation could be passed to prevent it, *such statutes could properly prohibit the opening of a bank (not yet open) whose stock was acquired by a holding company before the Act became effective, or require divestiture of such stock.* If Congress could have so provided to protect the national public policy, clearly Louisiana had the same right to protect its own public policy against such monopolistic bank operations under the "Reservation of States Rights" contained in 12 U.S.C. § 1846.

Moreover, in a decision rendered by the Supreme Court of the United States just 10 days ago in *Ferguson, Attorney General of Kansas v. Skrupa, d/b/a Credit Advisors*, 372 U.S. 726 (April 22, 1963), a Kansas statute which made it unlawful "for any person to engage in the business of debt adjusting" was upheld as wholly proper and constitutional state legislation. In that case, the plaintiff had actually been engaged in the business of "debt adjusting" in Kansas. He contended therefore that "the business could not be absolutely prohibited by Kansas". The Supreme Court disagreed, and upheld the constitutionality of the Kansas prohibition stating:

"We conclude that the Kansas Legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. Unquestionably, there are arguments showing that the business of debt adjusting has social utility, but such arguments are properly addressed to the legislature, not to us. We refuse to sit as a 'super-legislature to weigh the wisdom of legislation', and we emphatically refuse to go back to the time when courts used the Due Process Clause 'to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident or out of harmony with a particular school of thought.' *Nor are we able or willing to draw lines by calling a law 'prohibitory' or 'regulatory'.* Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours. The Kansas statute may be wise or unwise. But relief, if any be needed, lies not with us but with the body constituted to pass laws for the State of Kansas." (Italics supplied).

This ruling is so cogent to the case at bar when it is realized that Louisiana, by Section 3(5) of Act 275 of 1962, was seeking to prohibit operations by a *hurriedly created* Louisiana corporation, to wit, *Whitney Holding Corporation*—not a duly organized and operating national bank; and by this Louisiana corporation's wholly owned subsidiary, Whitney Jefferson, which had *not yet* been chartered by Comptroller Saxon as a national bank, and which was not yet doing any business as a national bank. In fact, the very purpose of this suit was to enjoin the Comptroller from taking the step still absolutely necessary and essential to constitute Whitney Jefferson a national bank.⁴ And,

⁴ The Court's attention is directed to J.A. 311, where a sample of the Comptroller's Certificate is set forth. This Certificate clearly shows on its face that, *only by its issuance*, would Whitney-Jefferson be "authorized to commence the business of banking as a National Banking Association". See also: 12 U.S.C. § 27, which states that *only when* "it appears that such an association is lawfully entitled to commence the business of banking", may the Comptroller issue the Certificate. *A fortiori*, the clear and proper application of Section 3(5) of Act 275 to Whitney Jefferson here *before* it even attained the lawful status of national bank. Its only status on July 10, 1962, when Act 275 became effective, was that of wholly-owned subsidiary of a Louisiana bank holding company.

under 12 U.S.C. 27, itself a provision of the National Bank Act, the Comptroller had no authority to issue a Certificate unless—

“the association is lawfully entitled to commence the business of banking”.

Louisiana, having made such operation unlawful, prior to the issuance of any certificate and before Whitney Jefferson was even authorized to commence the business of banking under the National Bank Act, it is perfectly clear that Act 275 in no respect collides with the National Bank Act, as appellants seek to contend in their briefs. But, even if it could be assumed that Whitney Jefferson had somehow already attained a non-operating national bank status by July 10, 1962, albeit no certificate had been issued by the Comptroller, Louisiana still had the authority, under 12 U.S.C. 1846, to prohibit the commencement of its operations as a Louisiana bank holding company, wholly-owned subsidiary.

II

The District Court. Having Completely Disposed of This Case Under Act 275 of 1962 and 12 U.S.C. § 1846, Correctly Declined to Determine Whether the Same Proposed Operation Was Prohibited By Other Statutes. However, It Is Crystal Clear That the Issuance of a Certificate by the Comptroller Should Also Be Permanently Enjoined Under the Facts of This Case, as Violative of Section 36c of the National Bank Act

Judge McLaughlin, having effectively disposed of the case under Act 275 of 1962 and 12 U.S.C. § 1846, correctly declined to go further and decide whether the same result would be reached under other applicable provisions of law. However, it is equally certain, under the facts of this case, that the proposed Whitney operation in Jefferson Parish is in violation of Section 36c of the National Bank Act and applicable Louisiana law.

First of all, both appellants, Whitney and the Comptroller, thoroughly concede that Whitney National Bank of New Orleans is absolutely precluded by Section 36c from opening branch offices or *additional offices* in Jefferson Parish.⁵ Faced with these federal-state statutory prohibitions, Whitney, nevertheless, carefully studied all of the means whereby it might evade same and still enter Jefferson (J.A. 276). It finally decided to try the "holding company approach". In *Braeburn Securities Corporation v. Smith, supra*, the Court stated, at page 809:

"... Branch banking in Illinois has been prohibited for many years.

"It is clear that this prohibition could be circumvented and indirect branching result if, through ownership of bank stock, one or more holding companies could control several banks. Branch banking can be accomplished by one bank operating at several locations or by one company owning or controlling several banks variously located."

Moreover, when the Federal Bank Holding Company Act was before the House of Representatives in 1955, the House Banking and Currency Committee specifically rejected the contention now advanced by appellants that there would be any *real* or *substantial* difference between a Jefferson Parish "branch" of Whitney National Bank of New Orleans and the "holding company device" adopted by Whitney to circumvent the law and accomplish the same basic result. In House Report 609 (84th Cong., 1st Sess., Cong. Record, pg. 8038), the Committee stated:

"Great stress has been placed on their difference *in form*, which everyone, of course, recognizes. Your Committee feels, however, in a large measure they are differences without a distinction. Other than in *form*, what is the practical difference between a branch and

⁵ Appellant Whitney's brief, pg. 3; Appellant Comptroller's brief, pg. 13. See also: 12 U.S.C. 36f, where the term "branch" is defined to include an "additional office".

a bank the stock of which is owned by a holding company that can select the bank's directors and change them at its pleasure, even holding repurchase rights to the directors' qualifying shares; that can hire and fire the bank's personnel and otherwise supervise its operations; that can make its investments, handle its insurance, buy its supplies, originate and place its advertising; can pass on its loans to local firms. . . .

"Bankers should certainly know whether bank holding company subsidiaries can in effect be operated as branches. A bankers' association asked the bankers of this country this question: 'Do you consider holding company banking, in effect, branch banking?' More than 97% of the replies were 'Yes'."

The federal courts, with this Circuit in the lead, have uniformly held that when the corporate device, including a holding company, has been used to defeat or circumvent a statute or to defeat public policy, the corporate entity must be disregarded in order to uphold the law (*Northern Securities Company v. United States*, 193 U.S. 197; *United States v. Lehigh Valley R. Co.*, 220 U.S. 257; *United States v. Reading Co.*, 253 U.S. 26; *Alabama Power Company v. Federal Power Commission*, 68 App., D.C. 132, 94 F. 2d 601, 618; *Francis O. Day, Inc. v. Shapiro*, 105 App., D.C. 392, 267 F. 2d 669; *Fitzpatrick v. Commonwealth Oil Co.*, (C.C.A. 5), 285 F. 2d 726, 730; *Corn Products Refining Co. v. Benson* (C.C.A. 2), 232 F. 2d 554, 565). In the *Francis O. Day, Inc.* case, *supra*, this Court stated, at 673, 674:

"Realities, in short, and not mere form must be considered by the courts. . . .

"In short, it is the use to which the corporate form is put which controls and the facts in the particular case will determine the course of relief."

In the case at bar, Whitney National Bank of New Orleans, admittedly seeking *solely to circumvent and evade the branch bank prohibitions of Section 36c of the National Bank Act*, created its own holding company, Whitney Hold-

ing Corporation (J.A. 28-33). Whitney New Orleans furnished, out of its own capital funds, *all* of the capital for the Holding Company (J.A. 28-33). The stockholders of Whitney New Orleans then exchanged all of their stock in the bank for all of the stock in the holding company (J.A. 28-33). Then, as Whitney itself stated to its stockholders (J.A. 31, 33):

"You will then own the same proportionate interest as you now have in the Whitney National Bank in all the assets of the holding corporation, which then obviously includes all of the assets of the present Whitney National Bank. Control of the Holding Corporation management will rest as it should with the holders of a majority of the stock. . . .

"The corporate identity of the 78 year old Whitney National Bank with the prestige and asset values inherent therein, is fully preserved under the holding company procedure, as is your undiluted ownership thereof."

Having organized the holding company and having simply traded the holding company stock for the Whitney New Orleans stock, then Whitney New Orleans (just as it would have done had it attempted directly to open a new branch office) provided \$650,000. for creation of the Whitney offices in Jefferson Parish (J.A. 30). In the words of the President of Whitney New Orleans (J.A. 30):

"... Whitney National Bank of New Orleans will provide \$650,000. to Whitney Holding Corporation with which Whitney Holding Corporation will cause to be created the Whitney National Bank in Jefferson Parish, receiving all stock therefor. . . ."

Whitney New Orleans, unlike appellants' briefs herein, was equally candid (before this litigation began), in describing just how the entire "device" would work in actual practice. Whitney stated (J.A. 30):

"Insofar as the operation in New Orleans is concerned, *this program is simply a corporate reorganiza-*

tion of the present Whitney National Bank of New Orleans. It contemplates no changes in personnel, management, or directorship. It contemplates no changes in the ownership or proportional shareholdings.

"The basic purpose of the program is to allow the Whitney organization in New Orleans to commence a Holding Company operation controlling a bank in East Jefferson Parish. . . ." (Emphasis supplied)

And, in a letter to its stockholders, Whitney New Orleans stated further (J.A. 32):

"We are firmly convinced, after careful consideration of the alternatives, that your common ownership of all of Whitney National Bank of New Orleans stock and all of the stock of a Whitney National Bank in Jefferson Parish by a holding company to be owned by you is the soundest method of pooling all of the deposits of our customers and of our capital funds . . . From the depositors' point of view, those in the smaller bank will be assured of the same management which directs the larger one without possibility of interruption. They will be assured of access to the large loan limits of the combined banks. They will have the security which arises out of the fact that the large and the small bank have identical ownership as well as management. . . ."

"Under the holding company approach, the relationship is completely owned by the stockholders of the holding company who will be the present stockholders of the Whitney National Bank. . . ."

"Because of the permanent relationship between the large and the smaller bank, the smaller one can operate safely with a smaller capitalization. . . ."

Furthermore, while appellants now seek to convince the Court that there are "important differences between a branch and a bank holding company subsidiary",⁶ they fail to apprise the Court that when the time arrived, on

⁶ Appellant Whitney's brief, pg. 39; Appellant Saxon's brief, pg. 54, 55.

June 28, 1961, for an Application to be filed with the Comptroller of the Currency for leave "to organize Whitney National Bank in Jefferson Parish"—the application *was not* filed by Whitney Holding Corporation. It *was not* filed by Whitney Jefferson, or anyone acting for Whitney Jefferson. *Rather the application to the Comptroller was filed by the true parent—Whitney National Bank of New Orleans (J.A. 380, 381).* And, what did the President of Whitney New Orleans tell the Comptroller when he filed this Application? He stated (J.A. 380):

"These applications form part of the overall plan for the operation in the Parish of Orleans and in the Parish of Jefferson of the Whitney organization in holding company form."

While the District Court declined to rule on the validity of these shenanigans under Section 36c in the final analysis, the Court also declined to be misled by the voluminous, complicated contentions of the appellants. For example, the following colloquy ensued between the Court and Counsel for the Comptroller during the argument on the Preliminary Injunction (J.A. 260):

"*The Court:* But isn't this true, Mr. Seaman, that if this device is legal . . . then you might as well repeal Section 36(c)?"

"*Mr. Seaman:* No, I would say, your Honor, that that is not the case. 36(c) applies only to branches.

"*The Court:* I understand. But it would also become a dead letter because any bank that wanted to establish a branch would create a holding company as an intermediary.

"*Mr. Seaman:* Yes, your Honor."

While appellants rely heavily upon the decision of this Court in *Camden Trust Co. v. Gidney, supra*, and a later decision in another Circuit in *First Nat. Bank of Billings v. First Bank Stock Corp., supra*, appellees submit that

these holdings, when applied to the facts of this case, require a ruling here that the Whitney plan presents a clear violation of Section 36c. First of all, Section 36 itself, at 12 U.S.C. § 36f defines "branch" to include not only a branch office—but any "*additional office or . . . place of business*". The record here shows that Whitney Jefferson was organized and intended exclusively as an "additional office" of Whitney New Orleans, "in holding company form" (J.A. 380).

Moreover, in *Camden*, this Court, over a very vigorous dissenting opinion, would not even sustain the validity under Section 36c of an "affiliate" organized "independently" by 9 persons who also served on the Board of Haddonfield National Bank until it was proved 1) that the organizers of the "affiliate" were committing themselves and their capital *as individuals*; 2) that they were required to raise \$517,500. in *new or fresh capital*, i.e., in monies *not drawn from Haddonfield*; 3) that the "capital structure of the affiliate" was *totally independent* of that of Haddonfield; 4) that the "affiliate" had a name "not susceptible of confusion with Haddonfield National", etc.

In the case at bar, Whitney New Orleans "in holding company form" is the organizer of Whitney Jefferson. No individuals are committing new, fresh capital. On the contrary, the capital is being drawn directly from Whitney New Orleans. The "capital structure" of Whitney Jefferson is *not* at all independent of Whitney New Orleans; and the New Orleans and Jefferson banking offices have essentially the same name—"Whitney". In this latter connection, the Court's attention is directed to J.A. 126-130, where the proposed samples of Whitney Jefferson's checks show "Whitney National Bank" in very large letters, with "in Jefferson Parish" in tiny print.

Of even greater significance, of course, is the fact that Whitney New Orleans itself specifically and admittedly rejected the type of affiliate involved in *Camden*. In formal

testimony, the President of Whitney New Orleans stated (J.A. 74):

"... we have been unwilling to go with an affiliate which we couldn't hold onto necessarily.

"It doesn't become a part of our organization; it is just sort of hanging loosely. You have these conflicts of interest and it is awkward.

"The thing that makes this (the holding company) interesting to us is the ability to approach the branch phase of it."

And, at J.A. 71:

"As we see it, in an affiliate relationship, we have no way of knowing or no way to prevent the stock of the two institutions from drifting apart . . .

"In an affiliate relationship with different stockholders, there is a constant conflict of interest as between those stockholders in every transaction between the two banks. . . .

"That could be eliminated under the approach we have taken."

Again, while the Court below declined to rule finally on the force of *Camden* in the case at bar, it nevertheless plainly expressed its tendency as follows in a colloquy with counsel for the Comptroller (J.A. 256):

"*The Court*: The *Camden Trust Company* case is a bit different, isn't it? It involved two *independent* banks each having the same group of stockholders.

"*Mr. Seaman*: Yes, your Honor, that is the difference. That is true.

"*The Court*: Here you have a holding corporation owning the stock of both banks. Isn't that a situation of a different type?

"*Mr. Seaman*: Yes, your Honor, it is different. We consider, however, the difference is not significant."

In *First National Bank in Billings v. First Bank Stock Corporation, supra*, the Court, instead of supporting the

appellants' basic contentions upon this appeal, ruled at 306 F. 2d 937, 942:

"We do not agree . . . that the fact that the two banks are separate corporate organizations demonstrates conclusively that one is not a branch of another. In the banking field, as elsewhere, courts have power to "pierce the corporate veil" when the *realities* require it."

The "*realities*" in *Billings* were extremely different from the "*realities*" of this case. In *Billings*, the bank holding company was organized in 1929, and had been operating in that capacity for 30 years. It possessed stock in 87 banks with 94 offices. Thus, it was not created or organized by a bank, such as Whitney, solely for the purpose of opening a branch office of that bank. It was the traditionally recognized bank holding company, which, *with its own capital*, invests in or buys the stock of banks. It was not the type of holding company here involved, whose only capital was the money siphoned through it by Whitney New Orleans to open Whitney Jefferson in a prohibited location. In the words of *Billings*, the corporate veil should be pierced whenever one bank is "doing business through the instrumentality of the other" . . . or, "in the same way as if the institutions were one".

In the case at bar, the banks were organized to do business as one. As the President of Whitney New Orleans put it, these two were to operate as "the Whitney organization in holding company form" (J.A. 380). Ergo, the permanent injunction herein is sustainable under Section 36c, as well as under Louisiana Act 275 of 1962 and 12 U.S.C. § 1846. *Commercial State Bank v. Gidney*, 174 F. Supp. 770, *affd.* 278 F. 2d 871, 108 U.S. App. D.C. 37 (1960); *Wayne Oakland Bank v. Gidney*, C.C.A. 6, 1958, 252 F. 2d 537, *cert. denied* 358 U.S. 830; *Michigan National Bank v. Gidney*, 99 U.S. App. D.C. 134, 237 F. 2d 762 (1956), *cert. denied* 352 U.S. 847.

III

The District Court Correctly Ruled That Appellee Banks Have Standing to Sue

In its Findings of Fact in support of the Permanent Injunction herein, the District Court found (J.A. 448):

"18. Plaintiffs and intervening plaintiffs have presented sworn, *uncontroverted* facts to show that, if defendant Comptroller is not prohibited from issuing his Certificate of Authority to Whitney-Jefferson, each plaintiff bank will sustain irreparable injury and damage in excess of \$10,000., exclusive of interest and costs."

Thus, in its Conclusions of Law, the District Court correctly concluded (J.A. 449):

"5. Plaintiff and intervening plaintiff banks, faced with proposed invasion of property rights and injury from the proposed unlawful issuance by defendant Comptroller of a Certificate of Authority to intervening defendant Whitney-Jefferson, have standing to bring this suit, and they have no other adequate remedy at law (*Wisconsin Bankers Association v. Robertson*, 190 F. Supp. 90, 94, *affd.* 294 F.2d 714 (App., D.C.), *cert. denied* 368 U.S. 938, *rehearing denied* 368 U.S. 979 (1961); *Commercial State Bank v. Gidney*, *supra*; *Wayne Oakland Bank v. Gidney*, *supra*)."

When the cross-motion for summary judgment came on to be heard before the Court below, Judge McLaughlin specifically inquired (J.A. 434):

"*The Court*: Are there any other matters that might raise questions at this time?"

"The Court hears no affirmative response. The Court assumes it can proceed on the basis that there is no question of fact that would prevent motions for summary judgment from being heard."

The Comptroller of the Currency, however, who made no effort in the District Court to controvert in any respect the

sworn facts upon which the Court based its Findings and Conclusions (J.A. 443, 444), or to oppose Finding of Fact "18" above, now frantically attempts to contend that appellees have no standing to sue. His belated effort is specious and without support in either fact or law.

Appellees, Bank of New Orleans and Bank of Louisiana, without contradiction from either appellant, proved that they maintain their banking offices entirely within the Parish of Orleans, and are prohibited by the same laws, which heretofore have also prohibited Whitney National Bank of New Orleans, from establishing any banking facilities whatsoever in Jefferson Parish or any Parish of Louisiana other than Orleans (J.A. 201, 303). Each of these two appellees, however, have "a very large number . . . of customers, depositors and borrowers who reside in and are principally located in Jefferson Parish", where the Comptroller proposes unlawfully to license Whitney to open and operate, in violation of the federal and state statutes (J.A. 201, 202; 303). Appellee, Bank of New Orleans, proved that it possessed checking accounts at its New Orleans offices of depositors from Jefferson in the sum of \$2,029,000.; such accounts being maintained by 2,812 individuals and businesses (J.A. 202). These deposits represented 12.3% of that appellant's total deposits (J.A. 202). In addition, said Bank of New Orleans proved it possessed commercial loans (in excess of \$10,000.), and promissory notes and other indebtednesses, secured and unsecured, from persons and businesses and by property located in Jefferson Parish, amounting to approximately \$3,410,000. (J.A. 202). These accounted for approximately 15% of that bank's total commercial loans in excess of \$10,000. In addition, said appellee also had loan accounts of a further "large volume" of less than \$10,000. from other persons and corporations in Jefferson Parish (J.A. 202). Similar uncontroverted proof was adduced by Appellee Bank of Louisiana (J.A. 304).

Each of these appellees then stated in sworn testimony (J.A. 202; 304):

"Accordingly, should the Comptroller of the Currency authorize the Whitney National Bank of New Orleans, the largest bank in the State, with combined resources of almost $\frac{1}{2}$ billion dollars, to open branch banking facilities through one device or another in Jefferson Parish, plaintiff(s) would necessarily suffer severe loss of loans, deposits and other business and would sustain damage to (their) business and profits exceeding \$50,000. per year. Additionally, if the Comptroller is permitted to issue the certificate of authority, as he proposes to do unless enjoined, (these) plaintiff(s) would have no adequate remedy at law and would be unable to defend (themselves) against the diversion to and appropriation by said Whitney National Bank of a substantial part of the banking business and services now enjoyed . . . "

Appellee, Guaranty Bank & Trust Company of Lafayette, Louisiana, introduced similar sworn proof of irreparable injury, damage and loss for which it had no adequate remedy at law (J.A. 305, 306).

In *Commercial State Bank of Roseville v. Gidney, Comptroller of the Currency, supra*, Judge Youngdahl, in a case almost identical to the case at bar entered an injunction restraining the Comptroller from issuing a Certificate to license the opening of an unlawful banking operation. He expressly ruled at 174 F. Supp. 770, 780:

"Under the circumstances of this case, the Court is of the opinion that plaintiffs have standing to bring this suit."

This Court affirmed (108 U.S. App. D. C. 37 (1960)). Certainly, if this Court (as Appellant Comptroller now contends), intended to reserve the question of whether bank plaintiffs, suffering threatened irreparable injury and loss from the licensing of an unlawful operation by the Comptroller, had standing to sue, it would not have affirmed the injunction granted by the District Court in *Roseville*.

Moreover, in *Wayne Oakland Bank v. Gidney, Comptroller of the Currency*, (C.C.A. 6, 1958), 252 F.2d 537, cert. denied, 358 U.S. 838, a case very similar to *Roseville* and to the case at bar, the Sixth Circuit Court of Appeals ruled, at page 544:

“As to the standing of the Wayne Oakland Bank to maintain its suit, it was faced with invasion of property rights, and injury from a competition that was prohibited by the federal statutes subjecting national banks to the same rules of law as cover the state banks . . . Whether the rights of a party are infringed by unlawful action of an individual or by the exertion of unauthorized federal administrative power, it is entitled to have such controversy adjudicated.”

In the *Wisconsin Bankers* case, *supra*, Judge Tamm carefully reviewed most of the decisions now relied on by the Comptroller in his brief,⁷ and then rejected the contention there made that plaintiffs lacked standing to sue. He stated, at 190 F. Supp. 90, 94:

“The defendants . . . challenge plaintiffs’ status to sue.

“Briefly stated, then, the defendants rely upon a substantial number of cases cited in the footnote below which set forth the established principle that in order to have status to sue, the plaintiffs must establish that some legal interest of theirs, personal to them and recognized by law, has been violated to their legal injury. The Court has carefully reviewed the cited cases, and finds in them no situation . . . legally comparable to the status of these Collectively, the plaintiffs, by federal or state charters, are empowered to conduct banking business in the State of Wisconsin. . . . The plaintiffs’ charter, then, represents a property right which they are entitled by law to protect. As indicated, this status differentiates these plaintiffs from all of the plaintiffs in the enumerated cases.”

⁷ The Comptroller relies on *Alabama Power Co. v. Ickes*; *Tennessee Power Co. v. T.V.A.*; etc., all of which were expressly considered by Judge Tamm.

In *Camden Trust Co. v. Gidney, supra*, the District Court decided against the plaintiff on the merits of the suit, and, in an unreported ruling and apparently without reciting any reasons, also found that Camden Trust Company was without standing to sue. This Court, with Judge Bastian dissenting, agreed with the District Court *on the merits*; and having so decided and disposed of the case, this Court deemed it unnecessary to consider other contentions urged upon us". But, apparently in order to be certain that its action would not be construed as an affirmance of the lower Court's finding that plaintiff was without standing, this Court carefully stated, in a footnote:

"We therefore do not discuss the District Court's conclusion that the appellant is without standing."

This action by this Court is a far cry from the Comptroller's present contention that this Court persistently "has reserved the question". It seems clear that, on the contrary, the question was substantially settled in favor of appellants by this Court's affirmance in *Roseville*.

The Comptroller's reliance upon this Court's decisions in *First National Bank v. First Federal Savings & Loan Assn.*, 96 U.S. App. D.C. 194, 225 F. 2d 33, *Union National Bank of Clarksburg v. Home Loan Bank Board*, 98 U.S. App. D.C. 204, 233 F. 2d 695, *Federal Home Loan Bank Board v. Rowe*, 109 U.S. App. D.C. 140, 284 F. 2d 274, and other similar cases, is clearly misplaced. Each of these cases involved attempts to enjoin federal actions "clearly committed to agency discretion" (225 F. 2d 33, 36), and this Court consequently found that plaintiffs' standing to sue was "disposed of automatically by Section 10 of the Administrative Procedure Act, 5 U.S.C. 1009." In *Commercial State Bank v. Gidney, supra*, therefore, Judge Youngdahl rejected the applicability of these same authorities, now relied on by the Comptroller, to suits such as the instant case, holding, at 174 F. Supp. 770, 778:

"Defendant argues that approval or disapproval of branches of national banks is a matter committed to the *discretion* of the Comptroller. But there is *no discretion* in the Comptroller to approve the establishment of a branch office at a location prohibited by law. . . . In the instant case, there is no desire to control the defendant's *discretion*. . . . But, as mentioned above, there is *no discretion* to unlawfully issue a certificate."

This Court affirmed (108 U.S. App. D.C. 37); and reiterated the same rule in *Camden Trust Co. v. Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, 522, footnote 4.

As stated by Judge Youngdahl in the *Roseville* case, at 174 F. Supp. 780:

"The plaintiffs are state banks . . . seeking to enjoin *unlawful competition* which threatens them with irreparable and immediate damage. . . . Under the circumstances of this case, the Court is of the opinion that the plaintiffs have standing to bring this suit."⁸

CONCLUSION

For the foregoing reasons, the judgment of the District Court must be affirmed.

Respectfully submitted,

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⁸ Cases such as *Union National Bank v. Home Loan Board*, *supra*, and *Tennessee Power Co. v. T. V. A.*, 306 U.S. 118, cited by appellant, involved instances of threatened "*lawful competition*," as distinguished from "*unlawful competition*," as here involved (Sec 233 F. 2d 695, 697).

WILBUR K. MILLER

REPLY BRIEF FOR APPELLANT WHITNEY
NATIONAL BANK IN JEFFERSON PARISH

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*,

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al.*, *Appellees*.

No. 17,681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*,

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, *et al.*, *Appellees*.

ON APPEALS FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 20 1963

Nathan J. Paulson
CLERK

May 18, 1963.

TABLE OF CONTENTS

Argument:	Page
I. Appellees Have Failed To Develop Any Convincing Theory That States Have the Power To Prohibit the Opening of a National Bank.....	1
(1) The "May Hereafter Have" Language of Section 7.....	3
(2) Appellees' Argument That Whitney-Jefferson Never Became a National Bank.....	5
(3) The Meaning of "Lawfully" in 12 U.S.C. § 27	7
(4) State Police Power v. The Supremacy Clause, and Appellees' Charge That Whitney Engaged in a "Race" With the Legislature.....	9
II. Appellees' Arguments That Whitney-Jefferson Should Be Treated as a "Branch" of Whitney-New Orleans Are Without Merit.....	12
A. The Ultimate Source of Whitney-Jefferson's Initial Capital Does Not Make Whitney-Jefferson a "Branch".....	14
B. Appellees' Claim That Whitney-Jefferson Is a "Branch" Under Louisiana Law Is Both Incorrect and Irrelevant.....	20
Conclusion	25
Appendix: Statutes.....	26

TABLE OF CITATIONS

Cases:	
<i>Buchanan v. Warley</i> , 245 U.S. 60 (1917).....	9
<i>Camden Trust Co. v. Gidney</i> , 301 F.2d 521 (D.C. Cir.), cert. denied, 360 U.S. 886 (1962).....	21-22
<i>Cook County National Bank v. United States</i> , 107 U.S. 445, 448 (1883).....	2, 23
<i>Deitrick v. Greaney</i> , 309 U.S. 190, 194 (1940).....	2, 7
<i>Farmers and Mechanics Trust Co.</i> , Federal Reserve Board Bulletin 14, 16, January 1960.....	14
<i>First National Bank in Billings v. First Bank Stock Corp.</i> , 306 F.2d 937 (9th Cir. 1962).....	10, 15, 17-19
<i>King v. Order of United Commercial Travelers of America</i> , 333 U.S. 153, 161 (1948).....	21

Cases—Continued

	Page
<i>Labit v. Terrebonne Parish School Board</i> , 49 So.2d 431, 434 (La. App. 1950)	20
<i>Michigan National Bank v. Gidney</i> , 99 App. D.C., 134, 237 F. 2d 762, cert. denied, 352 U.S. 847 (1956)	21
<i>Millard v. National Bank of Detroit</i> , 338 Mich. 610, 61 N.W.2d 804, 807 (1953)	21
<i>Mogis v. Lyman-Rickey Sand & Gravel Corp.</i> , 189 F.2d 130, 140 (8th Cir.), cert. denied, 342 U.S. 877 (1951)	20
<i>Railroad v. Husen</i> , 95 U.S. 465 (1878)	9
<i>Rushton ex rel. Commissioner of Banking Department v. Michigan National Bank</i> , 298 Mich. 417, 299 N.W. 129, 136 (1941)	25
<i>State ex rel. Singelmann v. Morrison</i> , 57 So.2d 238, 247 (La. App. 1952)	20
<i>Wallace v. Hood</i> , 89 Fed. 11, 19 (D. Kan. 1898)	6
<i>Wieman v. Updegraff</i> , 344 U.S. 183 (1952)	9

Statutes and Regulations:

Constitution of the United States, Article VI, Clause 2	2, 9
---	------

Bank Holding Company Act of 1956, 70 Stat. 133

12 U.S.C. §§ 1841-1848	3, 13
§ 1841	15
§ 1842(b)	14
§ 1845(a)	15
§ 1846	2-4

Banking Act of 1933, 48 Stat. 162, as amended

12 U.S.C. § 36(c)	21-24
§ 36(f)	23, 25

Louisiana Act 275 of 1962 (Ch. 12 Title 6, Louisiana Revised Statutes)

Act 275	5, 9, 11, 20
§ 3(5) (§ 1003(5) as codified)	3-12, 25

Louisiana Revised Statutes, Title 6

§ 54	20, 26
------------	--------

Statutes and Regulations—Continued

National Bank Act, Act of June 3, 1864, c. 106, 13 Stat. 99,
as amended

	Page
12 U.S.C. §§ 21-215	2, 7-9
§ 24	5, 6, 24
§ 26	7, 24
§ 27	5-8, 24
§ 56	16

Congressional Material:

S. Rep. No. 1095 (84th Cong., 2d Sess. 1956) (Part 2)	4
---	---

Miscellaneous:

(1) Comptroller of the Currency, <i>Annual Report</i> , 1929	18-19
(2) Federal Register, July 28, 1961	10
(3) Federal Register, December 1961	10
(4) Fischer, Gerald C., <i>Bank Holding Companies</i> (1961) ..	19

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ON APPEALS FROM A JUDGMENT OF THE UNITED STATES
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REPLY BRIEF FOR APPELLANT WHITNEY
NATIONAL BANK IN JEFFERSON PARISH

ARGUMENT

I

APPELLEES HAVE FAILED TO DEVELOP ANY CONVINCING THEORY THAT STATES HAVE THE POWER TO PROHIBIT THE OPENING OF A NATIONAL BANK.

This country operates with what we call a "dual banking system." Both of the banks involved in the Whitney program are *national* banks. Congress has

chosen to treat the problems arising from this dual system with different approaches in different contexts.

With respect to branching, Congress has chosen to make the location of national-bank branches subject to the restrictions of state law applicable to state banks. With respect to the chartering and opening for business of national banks, Congress has chosen to exclude the states entirely from any jurisdiction whatever. There is not even a statutory requirement that the Comptroller consult with state authorities or notify them of his intention to open a new national bank. If state law or administrative authority could prevent such action by the Comptroller, our system would not be "dual"; it would be subject to state control.

National banks are federal instrumentalities. They are preserved by the Supremacy Clause of the Constitution from any state interference with their effective functioning, let alone their very *existence*. The National Bank Act constitutes "by itself a complete system for the establishment and government of National Banks."¹ If a state wishes to regulate or forbid bank holding companies, it must find some way of so doing other than to prohibit a national bank from opening or operating; it may act with respect to state-chartered bank holding companies, but it cannot act on a national bank in a manner inconsistent with overriding federal law and interests.

The court below held that the Louisiana statute was constitutional because of Section 7 of the Federal Bank Holding Company Act, 12 U.S.C. § 1846. That section, however, simply provides that a state may exercise such jurisdiction with respect to bank holding com-

¹ *Cook County National Bank v. United States*, 107 U.S. 445, 448 (1883); *Deitrick v. Greaney*, 309 U.S. 190, 194 (1940).

panies as it constitutionally had at the time of the passage of the Bank Holding Company Act, or as it might thereafter acquire. Since any attempt by a state to prevent the opening of a national bank would have been unconstitutional before and apart from the enactment of the Bank Holding Company Act, and since Section 7 of that Act neither increased nor reduced state power, Section 3(5) of the Louisiana statute is unconstitutional.

Appellees have said nothing which impairs any part of this simple and, we submit, unanswerable argument. The great bulk of their contentions simply assume that what Louisiana has enacted is mere holding company regulation; their arguments amount to little more than the repeated assertion that states can regulate bank holding companies.² The fallacy of these contentions has already been fully developed at pages 15 through 31 of our initial brief and need not be discussed further here. Only a few particular allegations of appellees require brief comment.

(1) *The "May Hereafter Have" Language of Section 7.* One of these involves a challenge to our contention that Section 7 of the Federal Bank Holding Company Act of 1956, 12 U.S.C. § 1846, granted no new authority to the states, but merely preserved to the states such powers as they already had. The State Bank

² *Amicus Curiae* alleges, pages 2-3 of his brief, that nineteen states "prohibit or restrict bank holding companies in some manner" and that a reversal in this case "may affect the validity of other State statutes. . . ." If *Amicus Curiae* knows of a single state statute other than Louisiana's which purports to prohibit the opening of a national bank, let him name it. We know of none and believe there is none. A reversal in the present case on the ground that a state may not so prohibit a national bank would, of course, have no effect on state statutes which do not purport to do so.

Commissioner asserts, at page 13 of his brief: "The simple answer to this contention is found in the federal statute itself. 12 U.S.C. 1846 expressly preserved to Louisiana *not only* 'such powers and jurisdiction which it now has', but it also preserved to Louisiana—'such powers and jurisdiction which it . . . *may hereafter have. . .*'"

It is difficult to see what the State Bank Commissioner seeks to prove by this quotation. He does not point to any constitutional development since the enactment of the federal statute in 1956 which has resulted in any additional powers' being conferred on Louisiana. The only such development which he could possibly have in mind is the enactment of Section 3(5) of Louisiana Act 275; and the whole question is whether that enactment could validly be made. The language of Section 7 makes it wholly clear that the Federal Bank Holding Company Act did not confer any powers on the states; if they were to have them, they must either already have them or obtain them from some other source. If there were the slightest doubt about this, which there is not, it would be resolved by the Senate Report already quoted at page 22 of our initial brief:

"A great deal of concern has been expressed that section 7 of this bill . . . granted new authority and powers to States over national banks in general, and respecting the stocks of national banks in particular. . . .

"In order to clarify the legislative history of section 7 [12 U.S.C. § 1846], the committee wishes to emphasize that *this section does not grant any new authority to States over national banks.*" S. Rep. No. 1095 (part 2) (84th Cong., 2d Sess. 1956) page 5. (Italics added.)

(2) *Appellees' Argument That Whitney-Jefferson Never Became a National Bank.* Another contention of appellees is that Whitney-Jefferson is not entitled to protection as a federal instrumentality because it was not a national banking association at the time the Louisiana statute was enacted on July 10, 1962. Appellees claim that Whitney-Jefferson was cut off by Section 3(5) "before it even attained the lawful status of national bank. Its only status on July 10, 1962, when Act 275 became effective, was that of wholly-owned subsidiary of a Louisiana bank holding company." Brief of Appellee Banks, page 27; see also Brief of State Bank Commissioner, page 14.

This is plain error; 12 U.S.C. Section 24 expressly provides that:

"Upon duly making and filing articles of association and an organization certificate a *national banking association* shall become, as from the date of the execution of its organization certificate, a body corporate" (Italics added.)³

Whitney-Jefferson filed its articles of association and its organization certificate on May 10, 1962. R. 390. It thus became both a body corporate and a national banking association on that date, and was recognized as such by the Deputy Comptroller of the Currency by letter dated May 11, 1962. R. 392-394. The further certificate required by 12 U.S.C. § 27 does not create a national banking association, which is a prior step

³ No different conclusion, of course, follows (as alleged by Appellee Banks, page 27 n. 4) from the Comptroller's certificate, R. 311, stating that on its issuance Whitney-Jefferson would be "authorized to commence the business of banking as a National Banking Association."

provided for in Section 24, but rather permits the association already in existence to commence a banking business. See *Wallace v. Hood*, 89 Fed. 11, 19 (D. Kan. 1898).

All this, however, is little more than an argument about language. Although in fact Whitney-Jefferson did become a "national banking association" before the effective date of the Louisiana statute, it would make no difference even if it had not. Such matters of nomenclature cannot be controlling. Appellees' argument is in substance that Whitney-Jefferson cannot claim constitutional protection as a federal instrumentality because the Comptroller has not yet issued his certificate under 12 U.S.C. § 27; yet the objective of this very litigation is to prevent him from issuing that certificate, which he would have issued long ago had he not been restrained from so doing.⁴ What is at issue here is not the protection of Whitney-Jefferson as such, but rather the Comptroller's right to take action without state interference under a Congressional mandate to create and charter federal instrumentalities to perform federal functions.

⁴ It should be noted that Section 3(5) of Louisiana Act 275 expressly purports to prohibit the opening of a bank *even if* the Comptroller's certificate to commence the business of banking had already been issued prior to the effective date of the statute. Even the State Bank Commissioner in effect conceded that there is grave doubt whether Section 3(5) is in this respect constitutional when he said: "It is not necessary, therefore, for this court to decide whether Section 3(5) of Act 275 can constitutionally prevent a chartered national bank, authorized to commence the business of banking, from opening its doors for business." (Page 17 of his brief below; see also Brief of *Amicus Curiae* in this Court, page 18 n. 1.) If this purported effect of Section 3(5) is unconstitutional, as it clearly is, then the whole section must fall, since it constitutes a single integrated scheme.

The Comptroller, acting under the provisions of the National Bank Act, and having made all investigations and determinations required thereby, has concluded that Whitney-Jefferson is entitled under federal law to open a national banking business. This conclusion on his part is governed exclusively by federal law, without any reference whatever to state law. The "National Bank Act constitutes 'by itself a complete system for the establishment and government of National Banks.'" *Deitrick v. Greaney*, 309 U.S. 190, 194 (1940). Therefore Louisiana had no right to interfere with any stage of the process by which the Comptroller authorized and established this federal instrumentality.

(3) *The Meaning of "Lawfully" in 12 U.S.C. § 27.* Appellees dispute the conclusion reached above by arguing that 12 U.S.C. § 27 provides that the Comptroller may not issue his certificate unless "the association is lawfully entitled to commence the business of banking," and that this requires compliance with state as well as with federal law. (Brief of Appellee Banks, page 28; Brief of State Bank Commissioner, page 11 n. 1.) The latter contention may easily be refuted both by the language of the statute and by the settled interpretation of the courts. Sections 26 and 27, read together, state the requirements with which a national banking association must comply before receiving a certificate to open for business. Section 26 requires the bank to notify the Comptroller that it has "complied with all the provisions of *this chapter*" [the National Bank Act] required to be complied with before an association shall be authorized to commence the business of banking." The Comptroller is then directed to conduct an investigation into a number of matters specifically named

⁵ The italics in this and the following paragraph have been added.

“and generally whether such association has complied with all the provisions of *this chapter* required to entitle it to engage in the business of banking.”

Section 27 then provides that as a result of his “examination of the facts *so reported*” the Comptroller shall determine whether “such association is *lawfully* entitled to commence the business of banking,” and if so shall issue a certificate attesting “that such association has complied with *all the provisions*⁶ required to be complied with before commencing the business of banking.” It is further provided that the Comptroller may withhold his certificate “whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by *this chapter*.” In this context, nothing could conceivably be more clear than that the word “lawfully” refers to the requirements of the National Bank Act alone and bears no relation to any purported requirement in the law of any state.⁷

No other conclusion, of course, would be consistent with the settled views of the Supreme Court and other

⁶ That is, of course, all the provisions of *this chapter*, as recognized in the Comptroller's certificate form itself; see n. 7 below.

⁷ Further confirmation, if any be needed, is found in the language of the Comptroller's certificate. It states that “Whereas, satisfactory evidence has been presented to the Comptroller of the Currency that [name of bank] . . . has complied with *all provisions of the statutes of the United States* required to be complied with before being authorized to commence the business of banking as a National Banking Association; Now, therefore, I hereby certify” that the bank may commence business. R. 311. (Italics added.) This language has appeared, without substantial change, in the Comptroller's certificate ever since the very beginning of the national banking system in 1863, and is thus evidence of the uniform and long-standing official construction of the statutory language.

federal courts as to the pre-emption by Congress, in the National Bank Act, of the field of the establishment and government of national banks. (See the cases cited at pages 18-21 of our initial brief.)

(4) *State Police Power v. The Supremacy Clause, and Appellees' Charge That Whitney Engaged in a "Race" With the Legislature*. The State Bank Commissioner devotes most of his brief to elaborating the contention that a state has "a paramount police power to enact emergency legislation, if necessary, to protect and preserve the vital interests of the community." Pages 13-14 of his brief. But, of course, whatever else the state police power may be "paramount" to, it is not paramount to federal constitutional rights, conflicting valid federal legislation, or the constitutional federal pre-emption of a legislative field. The Supremacy Clause settled that. See, e.g., *Wieman v. Updegraff*, 344 U.S. 183 (1952); *Buchanan v. Warley*, 245 U.S. 60 (1917); *Railroad v. Husen*, 95 U.S. 465 (1878).⁸

It is difficult to see what the Commissioner adds to his argument by the assertion that Act 275 was responsive to an "emergency" created by appellants' "combined lightning attempt" (page 15) to rush into business before the Legislature could act. See also Brief of Appellee Banks, page 27, where Whitney Holding Corporation is described as "hurriedly created," and page 16, where appellee banks call the approvals by the Federal Reserve Board and the Comptroller "a sudden, totally unexpected, arbitrary federal adminis-

⁸ The cases relied on by appellees dealing with the police power of a state to forbid certain businesses (Brief of State Bank Commissioner, pages 14-16; Brief of Appellee Banks, pages 25-57) are wildly irrelevant. It is late in the day to argue that a state may prohibit national banks on the ground that it may prohibit lotteries or debt-collecting.

trative approval...."⁹ It is hoped that appellees will in oral argument be requested to reconcile these recklessly irresponsible charges with the facts that:

(1) The Whitney program was evolved in 1960 and early 1961 (R. 42);

(2) The program was formally submitted to the Comptroller and the Federal Reserve Board in June and July, 1961, the application to the Board being published in the Federal Register on July 28, 1961 (R. 98);

(3) The program was approved at a shareholders meeting of Whitney-New Orleans in November, 1961 (R. 324-328);

(4) The Federal Reserve Board, though not required by statute to do so, held a public hearing on January 17, 1962, having formerly given public notice thereof in the Federal Register in December 1961 (R. 58);

(5) In May 1962 the Federal Reserve Board approved the program, and both Whitney Holding Cor-

⁹ Appellee banks claim, page 26 of their brief, that in the *Billings* case "it was expressly stated that in instances where bank holding companies were known to be trying to defeat the public policy by racing to get into business before legislation could be passed to prevent it, *such statutes could properly prohibit the opening of a bank (not yet open) whose stock was acquired by a holding company before the Act became effective....*" (Italics in appellees' brief.) Aside from the fact that appellants were not "racing," what the *Billings* court actually said (by way of dictum) was that "*Congress could have prohibited the opening... of a bank*", etc.! 306 F. 2d at 941. (Italics added.) The fact that Congress could act with respect to national banks, member banks of the Federal Reserve System, and federally insured banks (the only banks affected by the Federal Bank Holding Company Act) has of course not the slightest implication that a *state* can similarly act with respect to a *national* bank.

poration and Whitney-Jefferson were organized (R. 46, 96, 390-394);

(6) This action was instituted on June 9, 1962, by banks which had never participated in the formal and public proceedings (R. 6, 61);

(7) The State Bank Commissioner, who likewise had taken no part in the public proceedings, did not move to intervene in this action until September 4, 1962 (R. 346);

(8) Act 27~~8~~ was first introduced into the Louisiana Legislature on June 3, 1962, in a form which would not have prohibited the opening of Whitney-Jefferson (R. 150-156, 314);

(9) Section 3(5), the only section relevant to this case, was first introduced on the floor of the Legislature as an amendment on June 27, 1962 (R. 157, 207, 334);

(10) Section 3(5) was originated by the President of the National Bank of Commerce, Whitney-New Orleans' principal competitor, which already has an affiliate in Jefferson Parish (R. 149);¹⁰

(11) Whitney-Jefferson would have had its certificate and would have opened for business before even the *introduction* of Section 3(5) in the Legislature, had it not been for the District of Columbia lawsuit (R. 16, 27, 47, 115-131, 181-184, 329, 390-391).

The Whitney program was evolved in an orderly manner and was implemented through normal and rather lengthy proceedings, which were public at every stage along the way. So far from Whitney's having done anything "hurriedly" or engaged in a "race" with the

¹⁰ Note that R. 149, Mr. Whitney's affidavit, contains a typographical error: the meeting at which the President of the National Bank of Commerce proposed his amendment took place on June 23, 1962, not January 24.

Legislature, it was the Legislature which, during the very final steps of the consummation of the Whitney program, intervened in an attempt to outlaw something which had been lawful at every prior stage of its evolution and implementation. The issue of who was "racing" whom is probably not determinative of any issue in this case; but since appellees have insisted in introducing it, it has been necessary for the true facts to be presented.

II

APPELLEES' ARGUMENTS THAT WHITNEY-JEFFERSON SHOULD BE TREATED AS A "BRANCH" OF WHITNEY-NEW ORLEANS ARE WITHOUT MERIT.

Appellees' principal arguments that Whitney-Jefferson is in substance a "branch" of Whitney-New Orleans are: (1) that the initial capital with which Whitney-Jefferson was organized derived ultimately from funds belonging to Whitney-New Orleans; and (2) that Louisiana law would consider Whitney-Jefferson a "branch" of Whitney-New Orleans if both were state-chartered banks. These arguments, which are wholly without merit, will be treated in subsections (A) and (B) below. Only a few other contentions of appellees require comment.

Appellees claim that the two banks will operate in substance "as if the institutions were one," Brief of Appellee Banks, page 36; but they do not discuss *a single one* of the many differences between Whitney-Jefferson and a hypothetical branch of Whitney-New Orleans which are outlined at pages 39-45 of our initial brief. Their quotation of statements made by the President of Whitney-New Orleans in describing the purpose of the Whitney program merely illustrates the fact, which is undisputed, that the principal ob-

jective of the Whitney program was to achieve as many of the advantages of branching as could legally be had through a holding company system. There is nothing, of course, unusual or pernicious about attempting to achieve by a non-prohibited means as many as possible of the same effects as could more directly and more fully be attained through a different means were that means not prohibited. Moreover, as we have shown and as appellees have not even attempted to deny, there are of necessity many distinctions in operation between a holding company subsidiary, such as Whitney-Jefferson, and a branch.

Appellants also showed (pages 37-38 of our initial brief) that an attempt had been made to achieve by federal legislation precisely the result for which appellees argue here, but that that attempt had failed. As passed by the House of Representatives, the bill which became the Federal Bank Holding Company Act of 1956 contained a provision automatically applying state branch-banking laws to holding-company subsidiaries: but the Senate rejected any such "arbitrary tie-in," and the Senate's views prevailed. Appellees' answer is to quote a statement by Chairman Spence of the House Banking and Currency Committee, floor manager of the *House bill* (Brief of Appellee Banks, pages 25-26).¹¹ This statement by Chairman Spence, which equates branch banking and holding-company banking, was made in the course of argument in favor of the *House bill*, with its provision which *would in*

¹¹ Also quoted by State Bank Commissioner, page 7. In addition, Appellee banks rely on a passage from the House Report on the bill (Brief of Appellee Banks, pages 29-30). Like Chairman Spence's statement, this passage was in support of the "arbitrary tie-in" with state branch-banking laws *which the Senate repudiated and struck from the bill*.

fact have equated branch banking and holding-company banking. At page 38 of our initial brief we quote the passage from the Senate Report which *expressly rejects* these views of Chairman Spence, and points out several of the important distinctions between branch banking and holding-company banking. Since it was the Senate's bill and not the House's bill which became law, a decision as to which of these conflicting views is authoritative is hardly very difficult.¹²

A. THE ULTIMATE SOURCE OF WHITNEY-JEFFERSON'S INITIAL CAPITAL DOES NOT MAKE WHITNEY-JEFFERSON A "BRANCH."

Appellees devote a great part of their efforts to arguing that some sinister significance should be attached to the fact that Whitney-Jefferson was capitalized by Whitney Holding Corporation with funds which

¹² It has been argued to the Federal Reserve Board in a number of cases that applications by bank holding companies for permission to acquire bank stock should be rejected on the ground that the law of the state in question prohibited branch banking. In view of the legislative history discussed above, the Federal Reserve Board (whose views as the principal interpreter and enforcer of the Federal Bank Holding Company Act are entitled to great weight) has had no difficulty in rejecting this argument. See, in particular, *Farmers and Mechanics Trust Co.*, Federal Reserve Board Bulletin 14, 16, January 1960, where after a review of the legislative history the Board concluded: "notwithstanding proposals made on the floor of the Congress regarding the relation of State branch banking laws to holding company expansion, the existence in a particular State of a prohibition against branch banking cannot be weighed as an adverse consideration by the Board in exercising its judgment on a holding company's application to acquire stock of a bank in that State."

Moreover, the Bank Holding Company Act does not even require the Federal Reserve Board to seek the views of state authorities on a proposed acquisition, if the bank or banks to be acquired are national banks. The state is consulted only when *state* banks are involved. Section 3(b) of the act, 12 U.S.C. § 1842(b).

had originally come to Whitney Holding as a dividend from its subsidiary, Whitney-New Orleans (*e.g.*, Brief of Appellee Banks, pages 19, 31, 34). They go so far as to claim (page 36 of their brief) that the origin of Whitney-Jefferson's capital is the principal reason why this case is different from the *Billings* case. These contentions are completely without merit.¹³

The stockholders of Whitney-New Orleans directed their officers to form a holding corporation and vest the ownership of that corporation in themselves by distributing the stock thereof as a stock dividend. They further directed the officers of Whitney-New Orleans, once Whitney Holding Corporation had acquired the stock of Whitney-New Orleans, to pay a dividend of \$650,000 to Whitney Holding Corporation as the stockholder entitled to receive dividends from Whitney-New Orleans. These funds of Whitney-New Orleans came out of *undivided profits available for dividends*,¹⁴

¹³ The State Bank Commissioner (brief, pages 17-18), though not the other appellees, renews a claim made below that the capitalization of Whitney Holding Corporation by Whitney-New Orleans with \$350,000 violated Section 6 of the Federal Bank Holding Company Act, 12 U.S.C. § 1845(a), which prohibits a bank from purchasing the stock or obligations of "a bank holding company of which it is a subsidiary." The short answer is that, at the time Whitney-New Orleans purchased stock in Whitney Holding (which it immediately distributed to its shareholders), Whitney Holding was not a "bank holding company," since it did not own stock in any bank, and Whitney-New Orleans was not a "subsidiary." (These terms are defined in Section 2 of the Act, 12 U.S.C. § 1841.) Moreover, this alleged violation of the Federal Bank Holding Company Act, which is a criminal statute administered by the Federal Reserve Board, is not properly presented in this proceeding, but is rather a matter for the Board or for the United States Attorney in Louisiana.

¹⁴ Appellee banks repeatedly asserted below (*e.g.*, R. 432) and insinuate here (*e.g.*, pages 6, 19 of their brief) that the \$650,000 came from the *capital funds* of Whitney-New Orleans. In oral

and had been subjected to their full share of federal and state income taxes. On receiving these funds, Whitney Holding Corporation, with the full foreknowledge and approval of its shareholders, used the funds to organize and capitalize Whitney-Jefferson.

What was involved here, therefore, was merely a payment of dividends out of earnings available under all applicable laws and regulations for distribution as such, and the use of such funds by the recipient for such purposes as it considered desirable, in this case the organization of a subsidiary. Nothing could be more normal business practice. The entire program, including this use of funds, was tested by the rules and regulations of the Comptroller of the Currency, the Federal Reserve Board and the Federal Deposit Insurance Corporation. These agencies are entrusted by Congress with the task of approving or disapproving the organization of national banks and the formation of and acquisitions by bank holding companies. Each approved the Whitney program, including the capitalization of Whitney-Jefferson, after detailed examination.

Withdrawal of "capital" from a national banking association, "either in the form of dividends or otherwise," is prohibited by law. 12 U.S.C. § 56. Appellees have not contended and cannot contend that the payment of the dividend in question violated this provision. The \$650,000 had never previously been part of the capital of any bank; and the stockholders of Whitney-New Orleans could have it declared out as dividends or use it for any purpose they pleased. Appellees have

argument below appellees tried another tack, claiming that the funds came out of the *surplus* of Whitney-New Orleans (R. 433-434). These irresponsible claims are false without qualification. Appellee banks themselves now admit, page 2 of their brief, that Whitney-New Orleans had undivided profits far in excess of the amount needed to capitalize Whitney-Jefferson.

not suggested the slightest reason why the stockholders' decision to use these accumulated earnings to establish a new bank through the vehicle of a holding company has anything to do with whether Whitney-Jefferson is in substance a "branch" of Whitney-New Orleans.

If Whitney-New Orleans actually established a branch that branch would have *no capital* of its own; it would enjoy the entire capital of Whitney-New Orleans and could rely on that entire capital for its solvency, loan limit and any other purpose. The very fact that in establishing Whitney-Jefferson new capital was required and was provided illustrates an important distinction between branch banking and holding company banking.

Equally unsound is appellees' claim that the capitalization of Whitney-Jefferson furnishes any distinction between the present case and *First National Bank in Billings v. First Bank Stock Corp.*, 306 F.2d 937 (9th Cir. 1962). The court in *Billings* did not attach any relevance whatever to the original source of the capital of Valley, the alleged "branch"; in fact it *never mentioned* where the holding company got the funds to capitalize Valley. But since the principal source of income of bank holding companies is, of course, dividends paid by their subsidiary banks, it is overwhelmingly probable that in *Billings* the initial capital of the alleged "branch" came originally from the same source as in this case, that is, funds available for dividends in the member banks of the holding company system. The normal source of funds which bank holding companies use to create new banking subsidiaries is dividends from their existing banks; no one, not even the plaintiff in *Billings*, ever seems to have previously claimed that this normal business fact could make the new bank a "branch" of an older one. The source of Whitney-Jefferson's capital, of course, has nothing to do with the

manner in which Whitney-Jefferson will operate when opened, and cannot help appellees in showing that Whitney-New Orleans and Whitney-Jefferson will operate "in the same way as if the institutions were one" (which is the *Billings* test; 306 F.2d at 942), or in satisfying any other test which could be used to resolve the issues in this case.

Appellee banks' only other distinction between the present case and *Billings* is that "in *Billings*, the bank holding company was organized in 1929, and had been operating in that capacity for 30 years. It possessed stock in 87 banks with 94 offices." Brief of Appellee Banks, page 36. Appellees fail to state what significance they attach to the year in which the holding company was begun, or the number of banks owned; and it is difficult to see what possible significance there could be. One would suppose that, if for a holding company to own two banks amounts to "branch banking," then for another holding company to own 87 banks (mostly in states which prohibit or severely limit branch banking; see R. 339-342) would be a far more serious "circumvention" of state branch-banking laws.

First Bank Stock Corporation, the holding company involved in *Billings*, was organized in 1929. In that very year the Comptroller's Annual Report had the following to say of the then-contemporary movement towards bank holding companies where branch banking was prohibited:

"These holding companies are attempting to do under the sanction of existing laws, which are crudely adapted to the purpose, what should be made possible in a simpler manner by new legislation. If branch banking were permitted to be extended from the adequately capitalized large city banks to the outlying communities within the eco-

conomic zone of operations of such banks, there would be no logical reason for the existence of the local holding company and it would give way to a system of branches operated directly by the central bank of the group." Comptroller of the Currency, *Annual Report*, 1929, pages 4-5.

The same movement of the 1920's towards bank holding companies was described to Congress by the Comptroller in 1930. (See quotation at page 36 of our initial brief.) A leading authority on bank holding companies has observed at the very outset of his treatise on the subject:

"One can state with a high degree of confidence that if the United States had followed the pattern of the other leading commercial nations and had established nationwide (or even trade-area) branch banking, there would be few, if any, bank holding companies; today, instead of having unit, branch, chain, and group banks, this country would probably enjoy a much more conventional banking system." Gerald C. Fischer, *Bank Holding Companies* (1961), page 1; see also pages 23, 138.

The purpose of the Whitney Holding Company program, then, was precisely the normal and conventional purpose of bank holding companies: to obtain as many (which are by no means all) of the advantages of branch banking as the differences in corporate form and the different statutory patterns of regulation will permit. The "realities" (Brief of Appellee Banks, page 36) of the present case are no different from the realities in *Billings* or in any other typical bank holding company situation.

**B. APPELLEES' CLAIM THAT WHITNEY-JEFFERSON IS A
"BRANCH" UNDER LOUISIANA LAW IS BOTH INCORRECT
AND IRRELEVANT.**

Appellees claim that the Whitney program in some manner violated the "spirit" of Louisiana law when that program was formulated, that is, before the introduction or enactment of Act 275 of 1962. They also vigorously argue that some significance should be attached to an opinion by the Attorney General of Louisiana that ownership by a holding company of banks in two parishes would be an illegal attempt to "circumvent the branch bank laws of our State" (R. 164).

The Louisiana statute relating to branch banking (La. Rev. Stat. 6: § 54, reproduced as the Appendix to this brief, page 26) makes no mention whatever of bank holding companies. No Louisiana court has ever interpreted this statute as meaning any more than it says. The Federal Reserve Board concluded that "the laws of Louisiana do not prohibit expansion of a banking organization by these means," that is, by the means involved in the execution of the Whitney program (R. 104). The Louisiana Attorney General, citing no authority, merely hazarded his opinion that holding company banking across parish lines is "prohibited, if not by the letter, by the spirit of our law" (R. 163).

It is clear that an opinion by a state Attorney General "has no controlling authority upon the state of the law discussed in it." *Mogis v. Lyman-Rickey Sand & Gravel Corp.*, 189 F.2d 130, 140 (8th Cir.), cert. denied, 342 U.S. 877 (1951). This is most emphatically the rule in Louisiana. "It is not necessary, of course, to say that such opinions [opinions of the Louisiana Attorney General] have no judicial significance." *Labit v. Terrebonne Parish School Board*, 49 So.2d 431, 434 (La. App. 1950); accord, *State ex rel. Singelmann v. Morrison*, 57 So.2d 238, 247 (La. App. 1952). A federal

court, of course, should give such an opinion no greater weight; "it would be incongruous indeed to hold the federal court bound by a decision which would not be binding upon any state court." *King v. Order of United Commercial Travelers of America*, 333 U.S. 153, 161 (1948). [Thus, even if Louisiana law were of any relevance in determining whether or not Whitney-Jefferson was a "branch," this Court would have to reach its own determination, as the Federal Reserve Board did, as to what that law is.¹⁵

No such issue, however, is proper or relevant. Section 36(c) of 12 U.S.C. provides that the Comptroller may permit a national bank to establish and operate a new branch if the establishment of a branch is "authorized to State banks by the statute law of the State in question." Clearly state law is relevant only as concerns the establishment of something which is a branch *as defined by federal law*. Louisiana cannot, by defining as "branches" things which are not branches under federal law, unilaterally enlarge the scope within which its law is made applicable by Section 36(c). "Violation of the standard [of Section 36(c)] offends against Federal, not State, law, for how can a national bank be guilty of violating a restriction imposed by State law on State banks." *Millard v. National Bank of Detroit*, 338 Mich. 610, 61 N.W.2d 804, 807 (1953).

In *Camden Trust Co. v. Gidney*, 301 F.2d 521 (D.C. Cir.), *cert. denied*, 360 U.S. 886 (1962), New Jersey, the state in question, contended, just as Louisiana does

¹⁵ The State Bank Commissioner's brief, page 19 n. 4, cites a decision of this Court for the proposition that the opinion of a state Attorney General "is entitled to great weight." The decision cited is *Michigan National Bank v. Gidney*, 99 App. D. C. 134, 237 F.2d 762, *cert. denied*, 352 U.S. 847 (1956). It in no way discusses or even mentions the weight to be given an opinion of a state Attorney General.

here, that the affiliate banking plan there involved would violate the New Jersey branch banking laws. 301 F.2d at 526. This Court considered the contention so irrelevant that it made no specific mention of it in its decision, and treated the question of whether the relationship there in question involved a "branch" as a matter of pure federal law. Having held that no "branch" was involved within the meaning of 12 U.S.C. § 36, it declared that "we deem it unnecessary to consider other contentions urged upon us." 301 F.2d at 525.

Appellees' claim that the establishment of Whitney-Jefferson is in some manner contrary to the policy of Louisiana is, to say the least, puzzling, in view of the fact that Louisiana has made no attempt to prevent Whitney-New Orleans' largest competitor in New Orleans, the National Bank of Commerce, from establishing an affiliate bank in Jefferson Parish itself. That affiliate has been operating for eight years under the name of the National Bank of Commerce in Jefferson Parish (R. 65, 116), and now has four offices there. This arrangement has brought into Jefferson Parish the same situation—common control of a bank in that parish and of a large New Orleans bank—which the State Bank Commissioner now asserts is and has been contrary to the policy of the state. The Commissioner has not pointed to any provision of Louisiana law which prohibits or even regulates the National Bank of Commerce's operation, and the state has never made any attempt to prevent or dissolve it. Thus appellees, if successful in this litigation, will materially assist in preserving the present unequal situation by which one of the two largest New Orleans banks, but not the other, is represented in Jefferson Parish. This was abundantly clear to the Comptroller and to the Federal Reserve Board (R. 42, 47, 105-106).

Amicus Curiae contends that the opinion of the Louisiana Attorney General must control because

“[U]nless the Comptroller is required to follow the construction which the State of Louisiana has given to its own branch banking law . . . , the competitive equality between State and National banks in Louisiana which Congress has consistently sought to preserve will be negated” (Brief of *Amicus Curiae*, page 24).

The defect in this argument is that Congress has *not* adopted any general principle that the powers and prerogatives of national banks shall differ from state to state in order to make national banks everywhere “equal” to other banks located in the same state. To the contrary, Congress has adopted a complete and autonomous statutory scheme providing, “as in a separate code by itself,”¹⁶ for the establishment, regulation, powers and prerogatives of national banks, and has used state law as a yardstick only in a few limited respects. One of these respects is that national banks may establish “branches” (as defined by 12 U.S.C. §§ 36(c) and (f)) only in locations where “the statute law of the State in question” permits branches (again, as defined by 12 U.S.C. §§ 36(c) and (f)) of state banks. Once it is concluded, as it must be, that Whitney-Jefferson is not a “branch” within the meaning of 12 U.S.C. § 36, then it is wholly irrelevant whether there is anything in the statute law of the state (let alone the administrative policies of state officials) which would classify it as a “branch.”

Amicus Curiae argues that its theory is necessary to preserve “competitive equality” between state and

¹⁶ *Cook County National Bank v. United States*, 107 U.S. 445, 448 (1883).

national banks, but actually adoption of this novel theory would *destroy* that equality, making national banks and the Comptroller of the Currency completely subservient, not only to state statute law, but to the policy views of state administrative officials.¹⁷ For example, if Louisiana law (or the Louisiana State Bank Commissioner) considered one bank a "branch" of another merely because the two banks had one common shareholder owning one per cent of the stock of each, the Comptroller would be required to deny an application to establish a new national bank if the same degree of mutual ownership existed. Similarly, if Louisiana took the position that a state bank established a new "branch" every time it added a new room to its premises or expanded to another floor of the same office building, the Comptroller would be required to enforce the same restriction against national banks. This fantastic theory finds no support in any statute, any legislative history, or in any judicial decision. It is, rather, in direct conflict with 12 U.S.C. §§ 24, 26, 27, 36(c)

¹⁷ *Amicus Curiae* not only accepts this implication of its theory, but affirmatively argues (pages 23-25 of its brief) that the Comptroller may not authorize Whitney-Jefferson to open *because the Louisiana State Bank Commissioner would reject a similar application by a state bank*. The short answer is that even if this case involved an application for a branch (which, of course, it does not), Section 36(c) directs the Comptroller to look only at "the statute law" of the state in question, not the policies of state administrative authorities. If the law were otherwise, the Comptroller would have to refer every application he received to the State Bank Commissioner for his decision as to whether he would grant it were the applicant a state bank. This, of course, is not the law, and no Comptroller has ever followed such a practice, which would completely undermine the autonomy of his office and of the entire national banking system.

and (f) and with the entire philosophy behind the national banking system.¹⁸

It is clear from the foregoing analysis that (1) Louisiana statute law contains nothing which identifies bank holding companies with "branches," and there is no evidence whatever that the Louisiana courts would consider Whitney-Jefferson a "branch" of Whitney-New Orleans; (2) whether Whitney-Jefferson should be regarded for purposes of this lawsuit as a "branch" of Whitney-New Orleans is a question of pure federal law, which must be determined without reference to state law. We have already shown, in our initial brief and at pages 12-19 above, that Whitney-Jefferson is not a "branch" under federal law.

CONCLUSION

Since Section 3(5) of Louisiana Act 275 of 1962 is unconstitutional, as applied to national banks, and since appellees' "branch" argument cannot furnish an alternative ground for affirming the decision below, that decision must be reversed.

Respectfully submitted,

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¹⁸ Substantially the same theory was squarely rejected by a state court in *Rushton ex rel. Commissioner of Banking Department v. Michigan National Bank*, 298 Mich. 417, 299 N.W. 129, 136 (1941).

APPENDIX

STATUTES

LOUISIANA REV. STAT., TITLE 6: § 54

§ 54. Branch offices other than in parish of domicile; capital required

All banks, savings banks, and trust companies having a capital of one hundred thousand dollars or more may open and maintain a branch office or branch offices in parishes in which there are no state banks, savings banks, and trust companies.

Not more than one branch office shall be opened in any one parish other than the parish of domicile, and such branch office shall be included in the number of branch offices authorized by Chapters 3 and 4 of this Title. The branch offices may carry on and conduct all usual transactions authorized by this Title for branch offices.

No branch office shall be opened without a certificate of authority from the commissioner.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING EN BANC FOR APPEL-
LANT COMPTROLLER OF THE CURRENCY

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH,
APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY; GUAR-
ANTY BANK AND TRUST COMPANY; BANK OF LOUISI-
IANA IN NEW ORLEANS; J. W. JEANSONNE, STATE
BANK COMMISSIONER OF THE STATE OF LOUISIANA,
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No. 17681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
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BANK OF NEW ORLEANS AND TRUST COMPANY; GUAR-
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Two of the appellees in this case, who are petitioners
in the Fifth Circuit proceeding (No. 19,788) under the

Bank Holding Company Act for judicial review of the Federal Reserve Board's order approving Whitney Holding Corporation's application to acquire and operate Whitney-Jefferson, have filed a "Supplemental Brief" in that court requesting that the Fifth Circuit set aside the Board's order or remand the case to the Board, because of this Court's decision in the cases at bar. We have set forth that "Supplemental Brief" in full as an Appendix to this memorandum, for the information of the Court.

Appellees' action in requesting that the Federal Reserve Board's order be set aside because of this Court's decision fully confirms our position, set forth in our Petition For Rehearing En Banc, pp. 2-8, that the present proceedings before this Court are simply a collateral attack upon the Board's decision, designed to avoid the impact of appellees' failure to exhaust the administrative and judicial review remedies explicitly prescribed by Congress in the Bank Holding Company Act.

In sustaining such a collateral attack, despite appellees' failure to follow and exhaust the Congressionally prescribed remedies, this Court committed a serious error, having adverse repercussions on the regulation of the banking industry and the orderly administration of justice, without any discussion or allusion to the problem.

A rehearing should be granted to rectify the error.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 19,788.

BANK OF NEW ORLEANS AND TRUST COMPANY, AND GUAR-
ANTY BANK AND TRUST COMPANY, PETITIONERS,*versus*BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
RESPONDENT.

SUPPLEMENTAL BRIEF FOR PETITIONERS, BANK
OF NEW ORLEANS & TRUST COMPANY and
GUARANTY BANK AND TRUST COMPANY.

MAY IT PLEASE THE COURT:

In a unanimous decision the United States Court of Appeals for the District of Columbia Circuit affirmed the judgment of the District Court rendered in the case of *Bank of New Orleans & Trust Company, et al. v. James J. Saxon, Comptroller of the Currency, et al.*, permanently enjoining the Comptroller of the Currency from issuing a Certificate of Authority to the Whitney National Bank in Jefferson Parish to open for business. *James J. Saxon, Comptroller of the Currency, Appellant v. Bank of New Orleans & Trust Company, et al., Appellees*, U.S. Court of Appeals for the District of Columbia Circuit,

Docket No. 17681, decided August 14, 1963.¹ In affirming the judgment of the District Court, the Court of Appeals held that Whitney National Bank in Jefferson Parish was, in fact, a prohibited branch of Whitney National Bank of New Orleans, stating:

"We think it clear that the opening of Whitney Jefferson is prohibited by 12 U.S.C. § 36 and that, consequently, the Comptroller was properly enjoined from issuing a Certificate of Authority for it to begin business. It is therefore unnecessary for us to decide whether the opening is also prohibited by Act 275 of the Louisiana legislature." [Opinion p. 27]

In view of the decision of the United States Court of Appeals for the District of Columbia Circuit that the intricate Whitney Plan to open Whitney offices in Jefferson Parish through the medium of a holding company device constituted a violation of the National Banking Act (12 U.S.C. 36[c]), counsel for petitioners earnestly suggest that it necessarily follows that in approving the application of Whitney Holding Corporation to become a bank holding company by acquiring the stock of Whitney National Bank in Jefferson Parish, the Board of Governors of the Federal Reserve System erroneously validated a plan which was in violation of the applicable national banking laws; i.e., 12 U.S.C. 36(c).

¹ Three printed copies of the decision furnished by the Clerk of the U. S. Court of Appeals for the District of Columbia Circuit, are filed herewith.

Petitioners accordingly respectfully submit that for the reasons set forth in their original and reply briefs heretofore filed herein, the Board's order of May 3, 1962 should be set aside or the matter remanded to the Board with instructions to revise its order on the basis of the applicable Federal and State laws.

Respectfully submitted,

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REPLY BRIEF FOR APPELLANT COMPTROLLER OF
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ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
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United States Court of Appeals

for the District of Columbia Circuit

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INDEX

Argument:	Page
1. Standing.....	2
2. The State's authority to prevent the Comptroller from author- izing the opening of a national bank.....	4
3. The prohibition against branch banking.....	6
Conclusion.....	8

CITATIONS

Cases:

<i>Alabama Power Co. v. Ickes</i> , 302 U.S. 464.....	3
* <i>Camden Trust Co. v. Gidney</i> , 112 U.S. App. D.C. 197, 301 F. 2d 521, certiorari denied, 369 U.S. 886.....	7
<i>Colorado Radio Corp. v. F.C.C.</i> , 73 App. D.C. 225, 118 F. 2d 24..	4
<i>George v. Mitchell</i> , 108 U.S. App. D.C. 324, 282 F. 2d 486.....	2
<i>Gidney v. Wayne-Oakland Bank</i> , 252 F. 2d 537 (C.A. 6), certiorari denied, 358 U.S. 830.....	6
* <i>Kansas City Light & Power Co. v. McKay</i> , 96 App. D.C. 273, 225 F. 2d 924, certiorari denied, 350 U.S. 884.....	3
<i>Northwest Bancorporation v. Board of Governors</i> , 303 F. 2d 832, (C.A. 8).....	7
<i>Perkins v. Lukens Steel Co.</i> , 310 U.S. 113.....	3
<i>Red River Broadcasting Co. v. F.C.C.</i> , 69 App. D.C. 1, 98 F. 2d 282.....	4
<i>S.E.C. v. U.S. Realty and Improvement Co.</i> , 310 U.S. 434.....	2, 3
<i>State of Texas v. Nat. Bank of Commerce</i> , 290 F. 2d 229, (C.A. 5), certiorari denied, 368 U.S. 832.....	7
* <i>Union National Bank of Clarksburg v. Home Loan Bank Board</i> , 98 U.S. App. D.C. 204, 233 F. 2d 695.....	3
<i>Wallach v. S.E.C.</i> , 92 U.S. App. D.C. 108, 206 F. 2d 486.....	4

Statutes:

Bank Act of 1933 (Act of June 16, 1933, ch. 89, (48 Stat. 189): Sec. 23, 12 U.S.C. 36.....	6, 7
Bank Holding Company Act of 1956 (Pub. L. 511, 84th Cong., 2d Sess., Act of May 9, 1956, c. 240, 70 Stat. 133): Sec. 3, 12 U.S.C. 1842.....	4, 5, 6
Sec. 9, 12 U.S.C. 1848.....	4

Miscellaneous:

102 Cong. Rec. 6857.....	5
102 Cong. Rec. 6858.....	5, 6
102 Cong. Rec. 6859.....	5, 6
102 Cong. Rec. 6860.....	5
102 Cong. Rec. 6862.....	6
Davis, <i>Administrative Law</i> , § 4.04.....	7
Rule 24. Fed. R. Civ. P.....	2
*Sen. Rept. 1095, Part 1, 84th Cong., 1st Sess.....	6

*Authorities primarily relied upon.

(I)

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REPLY BRIEF FOR APPELLANT COMPTROLLER OF THE
CURRENCY

In our main brief we showed that the district court erred in
restraining the Comptroller from issuing a certificate under
the National Bank Act which would permit Whitney National
Bank in Jefferson Parish to commence the business of banking.

Appellees and the Amicus Curiae have now advanced several contentions, which were not adopted by the district court, and were not discussed in our main brief. For that reason, we submit this reply brief.

1. Standing

Appellee State Bank Commissioner contends that the Comptroller waived the issue of his standing by consenting to his motion to intervene (Brief for State Bank Com., pp. 21-23). This waiver contention is not only immaterial,¹ but is also incorrect. Prior to appellee's motion to intervene, the Comptroller had filed a motion to dismiss the complaint on the ground (among others) "that plaintiffs lack standing to sue" (J.A. 307). The parties then stipulated that "The motion to dismiss" and motion for summary judgment against the original plaintiffs "shall be treated as motions to dismiss and for summary judgment against intervening plaintiff J. W. Jean-sonne, Louisiana State Bank Commissioner" (J.A. 384-5) and the defendants then agreed to his motion to intervene (J.A. 385). In short, the Comptroller, by stipulation of the parties, specifically reserved the standing issue when he consented to the State Bank Commissioner's motion to intervene.²

The State Bank Commissioner's argument that he had a right to intervene (Brief for State Bank Commissioner, pp. 19-20) is likewise beside the point. No one, either in the district court or here, has controverted that right. What we do contest is his standing, or that of any of the appellees, to invoke the jurisdiction of the district court. For, as the very authorities cited by the Commissioner make clear, the standards for intervention are quite different from those of standing to maintain a suit. The Supreme Court has ruled that Rule 24, Fed. R. Civ. P., "plainly dispenses with any requirement that the intervenor have any personal or pecuniary interest in the subject of the litigation." *S.E.C. v. U.S. Realty and Improvement*

¹ Since the standing of the plaintiffs is jurisdictional, it cannot be waived. See, e.g., *George v. Mitchell*, 108 U.S. App. D.C. 324, 282 F. 2d 486.

² The district court denied the Comptroller's motion to dismiss at the same time it denied his motion for summary judgment, and granted appellees' motion (J.A. 437, 451). The issue of standing was, of course, argued by the Comptroller in his memorandum of points and authorities.

Co., 310 U.S. 434, 459. By contrast, the Court has repeatedly held that a person may not invoke the jurisdiction of the Federal courts in the absence of an invasion or threat to a legal right which was personal to him. *E.g.*, *Alabama Power Co. v. Ickes*, 302 U.S. 464, 470, 479-483; *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 125. Since none of appellees have shown any invasion or threat to legal rights which are personal to them, but at most a possible economic disadvantage due to increased competition, the district court erred in failing to dismiss this action for lack of standing (Main Brief, pp. 25-31).

The contention of the other two appellees that they have standing to enjoin "unlawful competition", as distinguished from "lawful competition" (Brief for Appellees, Bank of New Orleans, et al., p. 42) is without merit. This Court has pointed out that in order to have standing, persons seeking to invoke the jurisdiction of the courts must show that the potential competition is "illegal as to them", *Kansas City Light & Power Co. v. McKay*, 96 App. D.C. 273, 225 F. 2d 924, 298-9, certiorari denied, 350 U.S. 884. And, this Court has also ruled that, since Congress has shown no intention of granting national or state banks a monopoly, or immunity from competition, they have no standing to contest the chartering by a federal agency of a new federal lending institution, because "they have no basis for asserting that the competition * * * is illegal as to them." *Union National Bank of Clarksburg v. Home Loan Bank Board*, 98 U.S. App. D.C. 204, 233 F. 2d 695, 697. Similarly, since appellees here have been unable to show that Congress has intended to grant them immunity from competition,³ they have no standing to complain that the issuance of a certificate of authority to Whitney-Jefferson would be illegal as to them.

Appellees' lack of standing to maintain this action did not leave them remediless. For the Federal Reserve Board af-

³ Appellees' suggestion (Brief for Bank of New Orleans, et al., p. 40) that the competition from Whitney-Jefferson would invade property rights granted by the charters of the banks is also without merit. Nothing in their charters grants appellees freedom from competition from national banks, any more than the corporate charters of the electric companies granted them immunity from the competition of the federal instrumentalities in *Kansas City Light & Power Co. v. McKay*, *supra*.

forded all interested persons an opportunity to submit their views, and to present evidence and argument on the application of Whitney Holding Corporation to acquire and open Whitney-Jefferson (Main Brief, pp. 15-16). And Sec. 9 of the Bank Holding Company Act (12 U.S.C. 1848) grants parties aggrieved by Board decisions on such matters the right to judicial review of those decisions in the appropriate court of appeals.⁴ Appellees' refusal to exhaust their administrative remedies, by presenting their views to the Board before its decision, and by becoming parties to the Board proceedings (Main Brief, pp. 15-17),⁵ does not give them any standing to bring this suit.

2. The State's authority to prevent the Comptroller from authorizing the opening of a national bank

The State Bank Commissioner relies upon Sec. 3(d) of the Bank Holding Company Act (12 U.S.C. 1842(d), sometimes referred to as the "Douglas amendment") as authority for the States to prohibit the opening of a national bank subsidiary of a bank holding company. He contends that it would be anomalous for Congress to grant to the States the authority to prohibit new acquisitions of banks within their borders by out-of-State bank holding companies, and to deny them the authority to prohibit such acquisitions by in-State bank holding companies (State Bank Com's. Brief, pp. 9-11). Similarly, Amicus Curiae seeks to draw some comfort from Sec. 3(d) (Brief for Amicus Curiae, pp. 12-13). In our view, Sec. 3(d) not only fails to support appellees' position, but also demonstrates the deliberate and rational Congressional decision to leave the regulation of the formation or acquisition of in-State national bank subsidiaries to Federal authorities, and not to the States.

⁴ Appellees sought such review in the Fifth Circuit in *Bank of New Orleans & Trust Co. v. Board of Governors*, No. 19788, which has been set for oral argument on June 5, 1963. In our view they forfeited their right to such review by failing to become parties to the Board proceeding.

⁵ E.g., *Red River Broadcasting Co. v. F.C.C.*, 69 App. D.C. 1, 98 F. 2d 282; *Colorado Radio Corp. v. F.C.C.*, 73 App. D.C. 225, 118 F. 2d 24; *Wallach v. S.E.C.*, 92 U.S. App. D.C. 108, 206 F. 2d 486.

In adopting the Douglas amendment Congress intended to limit the growth of the large, multi-State, bank holding companies, and thus to prevent an undue concentration of banking power in their hands. 102 Cong. Rec. 6857. In the speech supporting his amendment, Senator Douglas described in detail four major multi-State bank holding companies (Transamerica, First Bank Stock Corporation, Northwest Bancorporation, and First Security Corporation), their multi-State operations, and their assets. 102 Cong. Rec. 6858-9. For contrast, he listed a few of the bank holding companies which operate in one State only. 102 Cong. Rec. 6859. He then carefully described the effect of his proposed amendment in the following words (102 Cong. Rec. 6860):

It is still possible to have an expansion of a bank-holding company within its home State, if it musters the approval of the Federal Reserve Board. Moreover, if State law permits, and if approved by the Board, interstate acquisitions are possible.

Thus, under his amendment, for interstate acquisitions by bank holding companies, the permission of both State law and the Board are necessary, but for intra-State acquisitions, only the approval of the Board is necessary. Following as it did the earlier House bill which not only had flatly prohibited interstate acquisitions, but also forbade intra-State acquisitions in areas where State law did not permit bank branches (Main Brief, p. 40), the deliberate decision to limit the Douglas amendment to acquisitions across State lines is clear. This limited coverage of the Douglas amendment is apparent from its language, which directs that the Board deny applications for the acquisition of bank stock not permitted by State law, only if the bank is "located outside the State in which such bank holding company maintains its principal office and place of business." Sec. 3(d), 12 U.S.C. 1842(d), App. A. Main Brief, p. 62.

Nor was there anything anomalous about the Congressional decision to limit the effect of State law to across-the-border transactions. The amendment was aimed at the great multi-State bank holding companies which had already accumulated

such great assets that further expansion on their part was thought in itself to lead to an undue concentration of banking power. After listing and describing the four great multi-State bank holding companies, and noting that two of them had just moved into his home State, Senator Douglas stated that he sought to limit their expansion "across State lines." 102 Cong. Rec. 6858-59. Similarly, one of the co-sponsors of the Douglas amendment described its purpose as to limit the breadth of expansion "of great banking empires across State lines." 102 Cong. Rec. 6862. Since the smaller, single State bank holding companies described by Senator Douglas (102 Cong. Rec. 6859) were not large enough to constitute in themselves a serious threat of undue concentration of banking power, Congress chose to leave regulation of their expansion by acquisition of national banks within their States solely to the Federal Reserve Board, to be decided on a case by case basis in accordance with the five criteria set forth in the Act. 12 U.S.C. 1842 (c) and (d); Sen. Rept. 1095, Part 1, 84th Cong., 1st Sess., pp. 10-11; Main Brief, pp. 36-40.

3. The prohibitions against branch banking

Amicus contends that the great, overall purpose of 12 U.S.C. 36 was to preserve competitive equality between national and State banks, and that State law must therefore apply to determine whether or not a subsidiary of a bank holding company is to be deemed a branch bank (Brief of Amicus, pp. 20-34). Even if this contention were valid and the branch banking law of Louisiana were applicable, it would not support the judgment below, because there is no substantial authority for the proposition that the Louisiana branch banking laws prohibit the formation of a subsidiary of a bank holding company.* But the contention is invalid.

The purpose of Sec. 23 of the Banking Act of 1933, 12 U.S.C. 36, was to remove the competitive disadvantage under which

* The only authority cited by appellees and amicus is an opinion issued by the Attorney General of Louisiana after this litigation began, in response to an inquiry by one of the appellees (J.A. 161-164). In these circumstances, the opinion can be accorded little weight. See, *Gidney v. Wayne Oakland Bank*, 262 F. 2d 537, 544 (C.A. 6), certiorari denied, 358 U.S. 830.

national banks had previously labored in regard to branch banking.⁷ The scope of that policy was therefore limited to the scope of that section; and it is applicable only to branches as defined therein. 12 U.S.C. 36(f). In other words, 12 U.S.C. 36 incorporates the geographical limitations of the State branch banking laws, but, as this Court has already held, whether or not a bank is a "branch" is determined by that section itself, that is, by Federal law. *Camden Trust Co. v. Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, 524-525, petition for rehearing *en banc* denied, *Id.*, certiorari denied, 369 U.S. 886; *State of Texas v. Nat. Bank of Commerce*, 290 F. 2d 229, 232-233 (C.A. 5), certiorari denied, 368 U.S. 832. In *Camden Trust Co.*, *supra*, the competitor bank and the Amicus Curiae (which was also an amicus in that case) urged that under the applicable State law a State bank would have been precluded from establishing an affiliate where the national bank affiliate was to be established. This Court did not reach that contention. After noting that Congress had defined "branch" (301 F. 2d 524), it ruled (301 F. 2d at 525):

Convinced, as we are, that 12 U.S.C.A. § 36 has no applicability to the situation disclosed on this record, we deem it unnecessary to consider other questions urged upon us.

Similarly, Whitney-Jefferson is not a branch as defined in 12 U.S.C. 36. Accordingly, that provision, and the branch banking law of Louisiana, has no applicability to the situation disclosed by this record.⁸

⁷ See Main Brief, pp. 7-9; see *Camden Trust Co. v. Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, 524, certiorari denied, 369 U.S. 886.

⁸ Appellees profess shock and surprise at the fact that, in his letter to the Board following its hearing of January 17, 1962, the Comptroller did not comment on the legality of the formation of Whitney-Jefferson under 12 U.S.C. 36 and the Louisiana branch banking laws (Brief for Bank of New Orleans, et al., pp. 9-10). The short answer is, of course, that no one appearing at the hearing argued that the application was in violation of those laws (J.A. 62-95), and the Board only sought the Comptroller's views on matters which had been raised there (J.A. 424-425). The practices of the Federal agencies regulating banking, which were of course followed in this case (J.A. 44, 47-48) have been commended by court and commentator alike. *Northwest Bancorporation v. Board of Governors*, 303 F. 2d 832, 834 (C.A. 8); Davis, *Administrative Law*, § 4.04, pp. 247-248.

CONCLUSION

For the foregoing reasons, and those set forth in our main brief, the judgment of the district court should be reversed, with instructions to dismiss the action for want of standing, or, in the alternative, to enter judgment on the merits for appellants.

Respectfully submitted.

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MAY 1963.

BRIEF OF AMICUS CURIAE
NATIONAL ASSOCIATION OF SUPERVISORS OF
STATE BANKS

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH,
Appellant

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,
Appellees

No. 17,681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
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v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,
Appellees

Appeals from Judgment of the United States District
Court for the District of Columbia

United States Court of Appeals
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STATEMENT OF QUESTIONS PRESENTED

1. Whether the court below erred in holding: (a) that the Comptroller of the Currency had no statutory authority to issue a certificate of authority to the Whitney National Bank of Jefferson Parish in contravention of Section 3(5) of Louisiana Law 275 of 1962, enacted within the scope of the powers and jurisdiction reserved to the States by Section 7 of the Bank Holding Company Act of 1956, 12 U.S.C. § 1846; and (b) that Louisiana Law 275 of 1962 is constitutional?

2. Whether the Comptroller of the Currency is additionally barred from issuing a certificate of authority to the Whitney National Bank of Jefferson Parish by reason of Section 36(c) of the National Bank Act, 12 U.S.C. § 36(c), which establishes State law as the standard by which branches of National banks may be established, when the transaction here involved (a) would be barred to a similarly situated Louisiana State bank under Louisiana branch law, and (b) was entered into for the admitted and stated purpose of circumventing Louisiana branch law?

I N D E X

	Page
INTRODUCTION	1
STATEMENT OF THE CASE AND STATUTES INVOLVED	3
SUMMARY OF ARGUMENT.....	3
ARGUMENT	5
1. THE COMPTROLLER OF THE CURRENCY HAS NO STATUTORY AUTHORITY TO ISSUE A CERTIFICATE OF AUTHORITY TO THE WHITNEY NATIONAL BANK IN JEFFERSON PARISH IN CONTRAVENTION OF SECTION 3(5) OF LOUISIANA LAW 275 OF 1962, ENACTED UNDER A RESERVATION OF POWER FROM CONGRESS TO A STATE TO PROHIBIT, OR RESTRICT THE GROWTH OF, BANK HOLDING COMPANIES INCORPORATED UNDER THE LAWS OF THAT STATE..	8
A. National banks are subject to State law which is permitted by, or does not conflict with, the laws of the United States.....	8
B. In Section 7 of the Bank Holding Company Act, Congress has clearly and unequivocally expressed its intent that a State may prohibit, or restrict the expansion of, bank holding companies and their subsidiaries, whether National or State banks.....	10
C. Section 3(5) of Louisiana Law 275 of 1962 was enacted pursuant to Section 7 of the Bank Holding Company Act and is constitutional.....	14
D. Section 3(5) of Louisiana Law 275 of 1962 therefore acts as a bar to the issuance of any certificate of authority to the Whitney National Bank in Jefferson Parish.....	18

- II. THE COMPTROLLER OF THE CURRENCY IS ADDITIONALLY BARRED FROM ISSUING A CERTIFICATE TO THE WHITNEY NATIONAL BANK OF JEFFERSON PARISH, BECAUSE IT WOULD VIOLATE SECTION 36(c) OF THE NATIONAL BANK ACT WHICH ESTABLISHES STATE LAW AS THE STANDARD BY WHICH BRANCHES OF NATIONAL BANKS MAY BE ESTABLISHED..... 20
- A. This question must be considered within the framework of the Congressional policy on branching. 20
1. Congress has determined that the integrity of the dual banking system depends upon competitive equality between National and State banks in the matter of branching, and that such competitive equality is to be achieved by requiring the Comptroller to follow State law as the standard for the establishment of branches of National banks. 20
2. If a Louisiana State bank, similarly situated to the Whitney Bank of New Orleans, endeavored to establish a holding company system, one of whose subsidiaries would be a "new bank" in Jefferson Parish, an application for a certificate of authority to open the "new bank" would be rejected on the grounds that it was, in reality, a forbidden branch..... 23
3. A certificate issued to the Whitney National Bank of Jefferson Parish would, therefore, violate the fundamental policy of competitive equality established by Congress in Section 36(c) of the National Bank Act. 24

INDEX—(Continued)

iii

	Page
B. Congress did not intend, or contemplate, the evasion of the branch banking laws of Louisiana by the transaction here involved.....	25
1. The Bank Holding Company Act of 1956....	26
2. The <i>Billings</i> case.....	29
3. The <i>Camden Trust</i> case.....	29
C. This Court has the power to pierce the corporate veil to determine whether a new National bank is, in reality, a forbidden branch, and, when it does so, it must find that under the facts of this case, and under the law of Louisiana incorporated into the branch banking provisions of Section 36(c) of the National Bank Act, the Whitney National Bank in Jefferson Parish is, in reality, such a forbidden branch, and the issuance of a certificate of authority to it would, therefore, be unlawful.	31
CONCLUSION	34
APPENDIX A—Summary of State Laws Affecting Bank Holding Companies.....	35
APPENDIX B—Summary of State Laws Restricting Or Prohibiting Bank Holding Companies Prior to the Passage of the Bank Holding Company Act of 1956..	38
APPENDIX C—Georgia Bank Holding Company Act of 1956.....	40
APPENDIX D—Summary Of Branch Banking Statutes Of The 50 States, Puerto Rico, and Virgin Islands.....	44

TABLE OF CITATIONS

CASES:	Page
<i>Anderson National Bank v. Luckett</i> , 321 U.S. 233 (1944)	9
* <i>Braeburn Securities Corp. v. Smith</i> , 15 Ill. 2d 55, 153 N.E.2d 806 (Ill. Sup. Ct. 1958), appeal dismissed <i>per curiam</i> for want of a substantial federal question, 359 U.S. 311 (1959).....	4, 14, 15, 17, 18
* <i>Camden Trust Co. v. Gidney</i> , 112 App.D.C. 197, 301 F.2d 521 (1962), <i>cert. denied</i> , 369 U.S. 886.....	29, 30
* <i>Commercial State Bank of Roseville v. Gidney</i> , 174 F.Supp. 770 (D.C. Dist. 1959), <i>aff'd per curiam</i> , 108 App. D.C. 37, 278 F.2d 871 (1960).....	3, 4, 6, 8, 18, 19, 21, 34
<i>First National Bank v. California</i> , 262 U.S. 366 (1923)	10
* <i>First National Bank in Billings v. First Bank Stock Corp.</i> , 306 F.2d 937 (9th Cir. 1962).....	28, 29
<i>First National Bank in St. Louis v. State of Missouri</i> , 263 U.S. 640 (1924).....	9, 20
<i>Lewis v. Fidelity & Deposit Company</i> , 292 U.S. 559 (1934)	9
<i>Metropolitan Holding Co. v. Snyder</i> , 79 F.2d 263 (8th Cir. 1935).....	32
<i>Milheim v. Moffat Tunnel Improvement Dist.</i> , 262 U.S. 710 (1923).....	15
* <i>National Bank of Detroit v. Wayne Oakland Bank</i> , 252 F.2d 537 (6th Cir. 1958), <i>cert. denied</i> , 358 U.S. 830.....	18, 21, 34
<i>Ohio Tank Car Co. v. Keith Ry. Equipment Co.</i> , 148 F.2d 4 (7th Cir. 1945), <i>cert. denied</i> , 326 U.S. 730..	32
* <i>Opinion of the Justices</i> , 102 N.H. 106, 151 A.2d 236 (N.H. Sup. Ct. 1959).....	4, 15, 16, 17
<i>Roth v. Delano</i> , 338 U.S. 226 (1949).....	9
<i>Schenley Distillers Corp. v. United States</i> , 326 U.S. 432 (1946).....	31
CONSTITUTIONS, STATUTES AND RULES:	
U.S. Const., art. I, § 10, cl. 1.....	18
U.S. Const., art. VI, cl. 2.....	14

INDEX—(Continued)

v

	Page
Banking Act of 1933:	
48 Stat. 164 (1933), 12 U.S.C. § 321 (1958).....	22
48 Stat. 189 (1933), 12 U.S.C. § 36(c) (1958)....	22
Bank Holding Company Act of 1956:	
70 Stat. 133 (1956), 12 U.S.C. § 1841(b) (1958)...	11
70 Stat. 133 (1956), 12 U.S.C. § 1841(c) (1958)...	10
70 Stat. 134 (1956), 12 U.S.C. § 1841(d) (1958)...	10-11
70 Stat. 135 (1956), 12 U.S.C. § 1842(d) (1958)...	13
*70 Stat. 138 (1956), 12 U.S.C. § 1846 (1958).....	4, 5, 6, 10, 11, 12, 19
*Ga. Laws 1956, Vol. I, pp. 309-312 (Repealed Feb- ruary 9, 1960). See Appendix C.....	5, 11, 12
Illinois Bank Holding Company Act of 1957, Ill. Rev. Stats., C. 161½, §§ 71-76 (1961).....	14
*La. Law 275 of 1962, West's La. Rev. Stat. Anno., tit. 6, c. 12, § 1003(5) (1962 Supp.)....	2, 4, 6, 14, 17, 18, 19
La. Rev. Stat., tit. 6, c. 1, § 54 (1950).....	23
McFadden Act of 1927:	
44 Stat. 1228 (1927), 12 U.S.C. § 36(c) (1958)....	22
44 Stat. 1229 (1927), 12 U.S.C. § 321 (1958).....	22
National Bank Act:	
44 Stat. 223-24 (1926), 12 U.S.C. § 548 (1958)....	9
*44 Stat. 1228-1229 (1927), as amended, 12 U.S.C. § 36(c) (1958)	3, 6, 7, 19, 24, 26, 28
48 Stat. 185 (1933), 12 U.S.C. § 51 (1958).....	8
48 Stat. 191 (1933), as amended, 12 U.S.C. § 85 (1958)	9
64 Stat. 456 (1950), 12 U.S.C. § 214c (1958).....	9
76 Stat. 668 (1962), 12 U.S.C.A. § 92a(a) (1962 Supp.)	9
National Bank Act of 1864, Rev. Stat. §§ 5133 <i>et seq.</i> (1875), as amended, 12 U.S.C. §§ 21 <i>et seq.</i> (1958), as amended, 12 U.S.C. §§ 21 <i>et seq.</i> (Supp. III 1961)	2
D.C. Circuit R. 18(j)	1

* Cases or authorities chiefly relied upon are marked by asterisks.

	Page
CONGRESSIONAL MATERIAL:	
65 Cong. Rec. 11298 (1924)	22
75 Cong. Rec. 9890, 13,002 (1932)	22
76 Cong. Rec. 1449, 1997, 2079, 2080, 2090, 2205, 2206 (1932)	22
76 Cong. Rec. 1997, 2205, 2208, 2517 (1932)	23
102 Cong. Rec. 6752 (1956)	5, 11
Hearings Before the House Committee on Banking and Currency, "Control and Regulation of Bank Holding Companies", 84th Cong., 1st Sess. (1955)	13, 26, 27, 30
Hearings Before a Subcommittee of the Senate Com- mittee on Banking and Currency, "Control of Bank Holding Companies", 84th Cong., 1st Sess. (1955) ..	27, 30
H.R. Rep. No. 254, 73rd Cong., 1st Sess. (1933)	23
H.R. Rep. No. 609, 84th Cong., 1st Sess. (1955)	13
"Recent Developments in the Structure of Banking", Special Staff Report of the Board of Governors of the Federal Reserve System submitted to the Select Committee on Small Business, United States Senate Committee Print 87th Cong., 2nd Sess.	28
S. Rep. No. 77, 73rd Cong. 1st Sess. on S. 1631 (1933)	23
S. Rep. No. 584, 72nd Cong. 1st Sess. (1932)	22
S. Rep. No. 1095, Part 1, 84th Cong., 1st Sess. (1955)	13
S. Rep. No. 1095, Part 2, 84th Cong., 2nd Sess. (1956)	12
MISCELLANEOUS:	
1922 Annual Report of the Comptroller of the Currency	20-21
1923 Annual Report of the Comptroller of the Currency	21
1924 Annual Report of the Comptroller of the Currency	21
47 Fed. Reserve Bull. (1961)	27-28
48 Fed. Reserve Bull. (1962)	27
1 Fletcher, Cycl. Corps., § 45 (1931, Supp. 1960)	31

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BRIEF OF AMICUS CURIAE
NATIONAL ASSOCIATION OF SUPERVISORS OF
STATE BANKS

INTRODUCTION

This brief of *Amicus Curiae* is filed pursuant to Rule 18(j) of this Court with the consent of all parties to this case.

The National Association of Supervisors of State Banks (hereinafter called the "Supervisors") was founded in 1902 and has 52 members. It is composed of the officials of State governments responsible for the supervision of State-chartered banking institutions in every State in the Union, and of such officials in the Commonwealth of Puerto Rico and in the Virgin Islands. As of December 31, 1962, there were 9,357 commercial and mutual savings banks chartered under State laws subject to the Supervisors' jurisdiction with total resources in excess of 180 billion dollars.

The present system of federally chartered, or National banks, was created by the National Bank Act of 1864, Rev. Stat. §§ 5133, *et seq.* 12 U.S.C. §§ 21 *et seq.* The Appellant, the Comptroller of the Currency, is authorized to charter and supervise National banks under the provisions of that Act. As of December 31, 1962, there were 4,505 National banks with total resources of 160 billion dollars.

State banks, under State charter, and National banks, under federal charter, together comprise the "dual banking system" which has been in existence for 100 years.

The Supervisors have a keen interest in the resolution of both of the questions presented by this case:

Nineteen states prohibit or restrict bank holding companies in some manner. (See Appendix A to this brief and the note thereto.) Accordingly, any holding of this Court reversing the decision of the court below that Louisiana Law 275 of 1962 prohibits the expansion of a bank holding company organized under Louisiana statutes from opening for business a new National bank subsidiary, or that the law is unconstitutional if such is its intention, may affect the validity of other State statutes

seeking to prohibit or restrict the expansion of bank holding companies.

Thirty-two states prohibit or restrict branch banking. (See Appendix D to this brief.) Congress has sought to establish competitive equality between National and State banks in the matter of branching by prescribing State law as the standard for the establishment of branches by National banks under Section 36(c) of the National Bank Act, 44 Stat. 1228-29 (1927), as amended, 12 U.S.C. § 36(c) (1958); *Commercial State Bank of Roseville v. Gidney*, 174 F. Supp. 770 (D.C. Dist. 1959), *aff'd per curiam*, 108 App.D.C. 37, 278 F.2d 871 (1960). The transaction here involved was entered into for the admitted and stated purpose of circumventing Louisiana branch law. If such a transaction is sustained by this Court, it will provide a vehicle, not only in Louisiana, but also in the thirty-one other limited branch banking states for negating the competitive equality which Congress sought to achieve between State and National banks in the matter of branching.

STATEMENT OF THE CASE AND STATUTES INVOLVED

The facts of this case are as found by the court below (J.A. 445-448).

The principal statutes involved are set forth in the Appendix to the brief for the Appellant, Whitney National Bank in Jefferson Parish. Other statutes, as referenced, will be set forth herein.

SUMMARY OF ARGUMENT

I.

Judge McLaughlin in the opinion of the court below, cogently and correctly reasoned as follows:

(1) Section 7 of the Federal Bank Holding Company Act of 1956, 70 Stat. 138 (1956), 12 U.S.C. § 1846 (1958), reserved to the States such powers and jurisdiction as they then had, or might exercise in the future, with respect to banks and bank holding companies (J.A. 449).

(2) Section 3(5) of Louisiana Law 275 of 1962 (West's La. Rev. Stat. Anno., tit. 6, c. 12, § 1003(5) (1962 Supp.)) was enacted pursuant to, and within the scope of, Section 7 of the Federal Bank Holding Company Act, and, as such, is constitutional. *Braeburn Securities Corp. v. Smith*, 15 Ill. 2d 55, 153 N.E. 2d 806 (Ill. Sup. Ct. 1958), appeal dismissed *per curiam* for want of a substantial federal question, 359 U.S. 311 (1959); *Opinion of the Justices*, 102 N.H. 106, 151 A. 2d 236 (N.H. Sup. Ct. 1959).

(3) Section 3(5) of Louisiana Law 275 of 1962 is, therefore, by express permission of Congress, applicable to National banks and operates as a bar to the commencement of business by the Whitney National Bank in Jefferson Parish.

(4) Under the foregoing circumstances, any issuance by the Comptroller of a certificate to the Whitney National Bank in Jefferson Parish authorizing it to commence business would be unlawful, and the Comptroller may be duly enjoined from doing so. *Commercial State Bank of Roseville v. Gidney*, 174 F. Supp. 770 (D.C. Dist. 1959), *aff'd per curiam*, 108 App. D.C. 37, 278 F. 2d 871 (1960).

Appellants make three basic contentions in their unsuccessful effort to escape the inexorable logic of the decision of the court below.

First, they argue that National banks are instrumentalities of the Federal Government and are subject to the paramount authority of the United States. But no one

questions this proposition, or the equally valid proposition that Congress has the power, *if* it wishes to exercise such power, to bar the applicability of any State law to National banks. The fact of the matter is that Congress has *not* done so. In many provisions in the National Bank Act it has specifically adopted State law as applicable to National banks. Of particular relevance here, Congress has specifically reserved to the States power and jurisdiction over banks, bank holding companies, and subsidiaries of bank holding companies in Section 7 of the Federal Bank Holding Company Act.

Second, Appellants argue that the States never had any lawful authority over National banks involved in a bank holding company system, and, therefore, no State authority over such National banks could have been, or was, reserved by Section 7. This contention is without merit. At the time the Bank Holding Company Act was passed there were several States with laws which purported to prohibit, or restrict, bank holding companies, some of which laws were applicable to National banks (Appendix B). Congress was certainly aware of these statutes and would hardly have reserved to the States powers which a State "now has", if it thought their *existing* statutes were unlawful. Further, Senator Robertson of Virginia, the author of the Bank Holding Company Act of 1956, specifically referenced a Georgia bank holding company statute as "an example of the type of legislation the States may enact." 102 Cong. Rec. 6752 (1956). Section 2(a) of that statute *specifically* defined a "bank" as inclusive of a "National bank" (Appendix C).

Third, Appellants argue that, assuming the Section 7 reservation of power validly embraces a State statute prohibiting a bank holding company from acquiring the stock of a National bank subsidiary, it does not embrace an additional effort to restrict bank holding company expansion through a provision, such as Section 3(5) of

Louisiana Law 275, prohibiting a bank holding company from opening for business any National bank subsidiary which has not yet opened for business. This is a strained distinction without legal significance. If, under the Section 7 reservation of power, Congress intended to permit a State to prohibit a bank holding company from acquiring stock in a proposed new National bank subsidiary, it certainly intended to permit a State to prohibit a bank holding company from opening for business any new National bank subsidiary, the stock of which has just been acquired. The latter subsidiary has no special status. It is still in an embryonic stage until the issuance of a certificate of authority by the Comptroller. Only with the issuance of such a certificate will it become, for the first time, a lawful bank authorized to do business. Cf. *Commercial State Bank of Roseville v. Gidney, supra*. It is the validity of the issuance of such a certificate which is at issue in this case.

II.

The Comptroller is barred from the issuance of a certificate of authority to the Whitney National Bank in Jefferson Parish for the additional reason that it would violate Section 36(c) of the National Bank Act, 44 Stat. 1228-29 (1927), as amended, 12 U.S.C. § 36(c) (1958). That provision reflects a Congressional intent to establish competitive equality between National and State banks in the matter of branching, and implements that intent through the establishment of State law as the standard by which branches of National banks may be authorized.

This Court has the power to pierce the corporate veil to determine whether a new National bank is, in reality, a forbidden branch in contravention of the fundamental legislative purpose reflected in Section 36(c). The transaction here involved was entered into for the *admitted* and *stated* purpose of circumventing Louisiana branch law

incorporated into Section 36(c) of the National Bank Act, and is "simply the means by which Whitrey [National Bank of New Orleans] banking offices may be established and operated in East Bank [Jefferson Parish]", as found by the Federal Reserve Board (J.A. 100).

It is not correct to contend, as Appellants apparently do, that just because Congress chose to regulate branches and bank holding companies differently, Congress thereby gave a blanket endorsement to the bank holding company route as a device to avoid State branching laws. There is a vast difference between the typical bank holding company organized for investment purposes, usually over a large economic area, and the transaction here involved of one bank setting out to capitalize a holding company, and, through it, an affiliate in an adjoining parish, all for the stated purpose of avoiding the State branching law. If Congress had intended to give the green light to the bank holding company route as a device to avoid the statutes of the thirty-two states which prohibit or restrict branch banking (Appendix D), there certainly would be more than just forty-three bank holding companies registered under the Bank Holding Company Act of 1956 in all of America today—less than there were in the first full year after the Act was passed!

ARGUMENT

- I. THE COMPTROLLER OF THE CURRENCY HAS NO STATUTORY AUTHORITY TO ISSUE A CERTIFICATE OF AUTHORITY TO THE WHITNEY NATIONAL BANK IN JEFFERSON PARISH IN CONTRAVENTION OF SECTION 3(5) OF LOUISIANA LAW 275 OF 1962, ENACTED UNDER A RESERVATION OF POWER FROM CONGRESS TO A STATE TO PROHIBIT, OR RESTRICT THE GROWTH OF, BANK HOLDING COMPANIES INCORPORATED UNDER THE LAWS OF THAT STATE.

- A. *National banks are subject to State law which is permitted by, or does not conflict with, the laws of the United States.*

The *Amicus Curiae* does not contest the proposition advanced with great vigor by Appellants, and comprising a large portion of their briefs, to the effect that National banks are instrumentalities of the Federal Government and are subject to the paramount authority of the United States. Further, the *Amicus Curiae* is aware that Congress has the power, *if* it wished to utilize such power, to bar the applicability of State law to the operations of National banks. The fact of the matter, however, is that *Congress has not done so*.

First, in many important respects, Congress has specifically applied State law to National banks. For example, it has applied State law "as the measuring stick for the establishment of branches by national banks. 12 U.S.C.A. § 36(c)". *Commercial State Bank of Roseville v. Gidney*, 174 F.Supp. 770, 774 (D.C. Dist. 1959), *aff'd per curiam*, 108 App.D.C. 37, 278 F.2d 871 (1960). In certain instances it has applied State law as the measure of allowable capitalization of new National banks. 48 Stat. 185 (1933), 12 U.S.C. § 51 (1958). In other instances it has

limited National banks to interest rates on loans prescribed by State banks, a most important area of bank operation. 48 Stat. 191 (1933), as amended, 12 U.S.C. § 85 (1958). National banks may be granted trust powers *only* when "not in contravention of State or local law. . . ." 76 Stat. 668 (1962), 12 U.S.C.A. § 92a(a) (1962 Supp.). No conversion of a National bank to a State bank, or its merger with a State bank, may take place in "contravention of the law of the State in which the national banking association is located." 64 Stat. 456 (1950), 12 U.S.C. § 214c (1958). Congress has also specifically reserved to the States broad areas of taxation of National banks. 44 Stat. 223-24 (1926), 12 U.S.C. § 548 (1958).

Second, in addition to specifically applying State law to National banks in many instances, Congress also did not seek to occupy the field so as to preclude the application of State laws to National banks which do not conflict with Federal law. This point has been made in numerous cases upholding the applicability of State law to National banks. Thus, in *First National Bank in St. Louis v. State of Missouri*, 263 U.S. 640 (1924), the Supreme Court held that a Missouri statute forbidding branch banks was applicable to National banks. Other cases are *Lewis v. Fidelity & Deposit Company*, 292 U.S. 559 (1934) (State statute requiring National banks to be bonded); *Anderson National Bank v. Lockett*, 321 U.S. 233 (1944) (State statute relating to escheat of deposits of National banks to State); See *Roth v. Delano*, 338 U.S. 226 (1949) (*dictum*) (State discovery and escheat statute).

In view of the foregoing, it is apparent that the question of whether a specific State law is applicable to National banks is *not* to be answered by reference to the broad and admitted generality that National banks are instrumentalities of the Federal Government and are subject to the paramount authority of the United States.

The answer lies in a search for Congressional intent—does the State law conflict with, or frustrate the purposes of, federal law. *First National Bank v. California*, 262 U.S. 366 (1923).

Attention will next be turned, then, to an ascertainment of Congressional intent with regard to the applicability of State bank holding company laws to National banks.

B. *In Section 7 of the Bank Holding Company Act, Congress has clearly and unequivocally expressed its intent that a State may prohibit, or restrict the expansion of, bank holding companies and their subsidiaries, whether National or State banks.*

Section 7 of the Bank Holding Company Act of 1956, 70 Stat. 138 (1956), 12 U.S.C. § 1846 (1958) reads as follows:

“§ 1846. Reservation of Rights to States.

The enactment by the Congress of the Bank Holding Company Act of 1956 [this chapter] shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.” (The phrase “this chapter” was substituted for “the Bank Holding Company Act of 1956” in the process of codification into U.S.C.)

There is no question whatever but that when Congress reserved all powers and jurisdiction of the States over “banks” and “subsidiaries” of bank holding companies in the foregoing provision, it intended to embrace National bank subsidiaries, as well as State bank subsidiaries. The word “bank” is defined to mean “any national banking association or any State bank . . .” 70 Stat. 133 (1956), 12 U.S.C. § 1841(c) (1958). The word “subsidiary” is defined to mean “any company” in a stated relationship to a bank holding company, 70 Stat. 134 (1956), 12 U.S.C.

§ 1841(d) (1958), and the word "company" is defined to mean "any corporation, business trust, association, or similar organization . . .", 70 Stat. 133 (1956), 12 U.S.C. § 1841(b) (1958). If the word "company" did not embrace a National bank, National bank subsidiaries would be completely exempt from *all* of the provisions of the Act.

There is also no doubt concerning the scope of the "powers and jurisdiction" which a State "now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof" which Congress intended to reserve to the States. *At the time the Bank Holding Company Act was passed there were several States which prohibited, restricted the expansion of, or regulated bank holding companies, some of which had been on the books for many years.* (See Appendix B attached hereto.) Congress was certainly aware of such statutes, and it would hardly have gone ahead and have reserved to the States the powers which a State "now has" if it thought that these *existing* statutes were unconstitutional. Indeed, Senator Robertson of Virginia, the Chairman of the Senate Banking and Currency Committee, and the author and sponsor of the Bank Holding Company Act of 1956, made the following statement on the floor of the Senate with regard to the reservation of powers to the States in Section 7:

"It should be noted that another provision of the Senate bill expressly preserves to the States their present authority over bank holding companies within their respective borders. Therefore, each State may, within the limits of its proper jurisdictional authority, enact legislation to regulate bank holding companies. Mr. President, *as an example of the type of legislation the States may enact*, I ask unanimous consent to have printed in the Record the text of a bill recently passed by the Georgia legislature." 102 Cong. Rec. 6752 (1956) (Emphasis supplied).

The text of the Georgia statute which Senator Robertson gave as *an example of the type of legislation the States may enact* is set forth herein as Appendix C, and

should resolve *any* doubt as to the scope of the power over National bank subsidiaries which Congress intended to reserve to the States. That statute defined a "bank holding company" as a company incorporated under the laws of Georgia which controls "2 or more banks." In Section 2(a) a "bank" was defined as "any National bank or State bank." The statute, which carried heavy penalties, forbade any expansion of a bank holding company system beyond 2 banks.

The foregoing is clear and unequivocal. The *Amicus Curiae* must, therefore, differ strongly with the position taken by the Appellants that the reservation of rights to the States in Section 7 was somehow weakened by the following language in the Senate Report:

"In order to clarify the legislative history of section 7, the committee wishes to emphasize that this section does not grant any new authority to States over national banks." S. Rep. No. 1095, Part 2, 84th Cong., 2nd Sess., p. 5 (1956).

That sentence means just what it says: Section 7 does not constitute a grant of any *new* authority to the States which they do not already have beyond, for example, the authority contained in the Georgia statute which Senator Robertson gave as an example of a statute *which States may enact*.

Further, the legislative history of the Bank Holding Company Act makes it clear that the reservation of power to the States in Section 7 harmoniously meshes with the overall statutory scheme of the Bank Holding Company Act.

Thus, one of the purposes of the Act was to *supplement*, not *replace*, State authority. One of the major problems confronting States was their inability to prevent out-of-State bank holding companies from acquiring banks within the States. This was so because the States had no jurisdiction over such out-of-State companies inas-

much as they were not "doing business" there.¹ The Act, therefore, specifically barred any bank holding company from acquiring any additional bank, State or National, located outside of the State in which it maintains its principal office unless the statute of the State in which such additional bank is located authorizes an out-of-State bank holding company to acquire a State bank. 70 Stat. 135 (1956), 12 U.S.C. § 1842(d) (1958).

Another of the purposes of the Act was to set minimum standards for bank holding companies which State law could not contravene, but *not* to prohibit State law from being *more* restrictive regarding bank holding companies. The Senate report, in referring to Section 7, makes this point clear:

"In any event, another provision of this bill expressly preserves to the States a right to be more restrictive regarding the formation or operation of bank holding companies within their respective borders than the Federal authorities can be or are under this bill. Under such a grant of authority, each State may, within the limits of its proper jurisdictional authority, be more severe on bank holding companies as a class than (1) this bill empowers the Federal authorities to be or (2) such Federal authorities actually are in their administration of the provisions of this bill." S. Rep. No. 1095, Part 1, 84th Cong., 1st Sess., p. 11 (1955).

In the light of the foregoing, the *Amicus Curiae* submits that Congress has clearly and unequivocally expressed its intent that a State may prohibit, or restrict the expansion of, bank holding companies and their subsidiaries, whether National or State banks.

¹ H.R. Rep. No. 609, 84th Cong., 1st Sess., pp. 3-4, 7 (1955); Hearings Before the House Committee on Banking and Currency, "Control and Regulation of Bank Holding Companies", 84th Cong., 1st Sess., pp. 160, 164-5, 175-6, 333 (1955).

C. Section 3(5) of Louisiana Law 275 of 1962 was enacted pursuant to Section 7 of the Bank Holding Company Act and is constitutional.

Louisiana Law 275 of 1962, West's La. Rev. Stat. Anno., tit. 6, c. 12, § 1003(5) (1962 Supp.), does not violate the provision of Article VI, Clause 2 of the Constitution relating to the supremacy of federal law. If, as shown above, Congress has clearly and unequivocally expressed its intent that a State may prohibit, or restrict, the expansion of bank holding companies and their subsidiaries, whether National or State banks, then there is no conflict between Louisiana Law 275 of 1962 and federal law, and, therefore, no issue of constitutionality.

This position is sustained by all of the authorities on this point.

Braeburn Securities Corp. v. Smith, 15 Ill. 2d 55, 153 N.E. 2d 806 (Ill. Sup. Ct. 1958) concerned the Bank Holding Company Act of 1957 passed by the State of Illinois. Ill. Rev. Stats., C. 16½, §§ 71-76 (1961). This statute specifically defined a "bank" as meaning a "national banking association" (§ 72) and made it unlawful for any bank holding company to acquire control of more than 5% of the voting shares of "any bank" (§ 73 (2)). The Illinois Supreme Court upheld the applicability of the Act to National banks as follows:

"In 1956 Congress adopted legislation regulating bank holding companies (12 U.S.C.A. § 1841 et seq.) and provided, among other things, that its action should not impair the then jurisdiction of the States, and further specifically provided that administration of the Federal act should be within the confines of State law if any. The Illinois legislation, as well as legislation in New York, New Jersey, Pennsylvania and Indiana, is an acceptance of the suggestion implied in the Federal act that the States should act if, as a matter of policy, bank holding company legislation more restrictive than the Federal act was desired by the States. Further, it

seems clear that such State legislation could be applicable to national as well as State banks, since the Congress did not manifest an intent to pre-empt the legislative field. *People ex. rel. First Nat. Bank v. Brady*, 271 Ill. 100, 110 N.E. 864; *American Legion Post No. 279 v. Barrett*, 371 Ill. 78, 20 N.E. 2d 45." 15 Ill. 2d at pp. 61-62, 153 N.E. 2d at p. 810.

The appeal in the *Braeburn* case was dismissed for want of a substantial federal question by the United States Supreme Court, 359 U.S. 311 (1959), an action even stronger than judicial affirmance. *Milheim v. Moffat Tunnel Improvement Dist.*, 262 U.S. 710, 716-717 (1923).

Further, the opinion of the Justices of the Supreme Court of New Hampshire was sought in 1959 on the constitutionality of a proposed bank holding company act which, like the Illinois statute, defined "bank" as including National banks, and made it unlawful for any bank holding company to acquire more than 5% of the voting shares "in any other bank." In *Opinion of the Justices*, 102 N.H. 106, 151 A. 2d 236 (N.H. Sup. Ct. 1959), the Court upheld the applicability of the Act to National banks as follows:

"House Bill No. 272 would apply to national banks doing business in this state. These banks are instrumentalities of the Federal Government created for a public purpose and as such are necessarily subject to the paramount authority of the United States. *M'Culloch v. State of Maryland*, 4 Wheat. 316, 17 U.S. 316, 4 L.Ed. 579; *Davis v. Elmira Sav. Bank*, 161 U.S. 275, 283, 16 S.Ct. 502, 40 L.Ed. 700; *Henrys v. Raboin*, 395 Ill. 118, 69 N.E.2d 491, 169 A.L.R. 927; *Zarbell v. Bank of America Nat. Trust & Sav. Ass'n, Wash.*, 327 P. 2d 436. However the proposed bill would not be invalid unless it were found to interfere with the purposes of national banks or to destroy their efficiency or to be in direct conflict with some paramount federal law. *Nugent v. Mooney*, 3 Misc.2d 1067, 155 N.Y.S. 2d 611; *Millard v. National Bank of Detroit*, 338 Mich. 610,

61 N.W. 2d 804; *Franklin Nat. Bank of Franklin Square v. People*, 347 U.S. 373, 74 S. Ct. 550, 98 L.Ed. 767.

"On May 9, 1956, Congress enacted the 'Bank Holding Company Act of 1956' 70 Stat. 133; 12 U.S.C.A. § 1841 et seq. Section 7 thereof (70 Stat. 138; 12 U.S.C.A. § 1846) is entitled 'Reservation of rights to States' and reads as follows: 'The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.'

"As a result of this act and its provisions the question of whether our Legislature has 'the power or jurisdiction to legislate on this subject with reference to national banks chartered under the federal law * * is a question of much importance and perhaps of considerable difficulty.' *State v. People's National Bank*, 75 N.H. 27, 33, 70 A. 542, 545. However the Supreme Court of Illinois in the case of *Braeburn Securities Corporation v. Smith*, *supra* [15 Ill. 2d 55, 153 N.E. 2d 810], decided on September 18, 1958, held that 'it seems clear that such State Legislation [pertaining to bank holding companies] could be applicable to national as well as State banks, since Congress did not manifest an intent to pre-empt the legislative field.' An appeal from this decision to the United States Supreme Court was dismissed on April 20, 1959, 79 S.Ct. 876, for want of a substantial federal question.

"Furthermore at least seven states (Illinois, New York, Indiana, Kansas, Pennsylvania and Massachusetts) have enacted legislation in this field since Congress passed the Bank Holding Company Act of 1956. It is our opinion based on the wording of the act, its legislative history and the factors enumerated above that House Bill No. 272 would not conflict with any federal statute." 102 N.H. at pp. 109-110, 151 A.2d at p. 239.

In view of the foregoing well-reasoned opinions, the *Amicus Curiae* submits that a State statute prohibiting

the expansion of bank holding companies to include National banks within its system is clearly *not* in contravention to Federal law and is constitutional.

In their briefs, Appellants seek to isolate Section 3(5) of Louisiana Law 275 as a *sui generis* expression, separate and apart from provisions of any other State bank holding company acts, thereby rendering any reference to such other acts, or to the *Braeburn* and *Opinion of the Justices* cases, misplaced. This position appears to rest on the distinction that some statutes, such as the one in Illinois, which prohibit a bank holding company from adding a National bank to its system, do so by prohibiting the acquisition of stock in such a National bank, whereas Section 3 of Louisiana Law 275 includes a number of ways by which a bank holding company is prohibited from adding a National bank to its system, including the provision in Section 3(5), here relevant, of prohibiting a subsidiary of a bank holding company not now open for business, from opening for business.

This is a distinction without legal significance. *Amicus Curiae* readily concedes that there is no other State bank holding company act (see Appendix A) which has exactly the phraseology of Section 3(5) of Louisiana Law 275. This was a special provision inserted by the Louisiana Legislature to meet the exigencies of the transaction involved herein and caused by Whitney's unsuccessful race to complete its program before the Louisiana legislature acted. But as far as the constitutional issues are concerned, there is no difference between provisions which seek to restrict the expansion of a bank holding company to include a National bank in its system (a) by prohibiting the acquisition of stock in such a bank, or (b) by prohibiting such a bank from opening for business, as in Section 3(5). The question in *both* cases is the extent to which Congress reserved the rights of the States to prohibit and restrict the expansion of bank

holding companies, and that is the issue which has been explored in detail above.

The error in the position taken by the Appellants is perhaps caused by its mistaken view that the Whitney National Bank of Jefferson Parish holds some special status by reason of the fact that it is already organized, and that all it requires to open up for business is a certificate of authority. There is no such special status. The issuance of the certificate of authority is *vital*. Without it, a National bank is simply not a lawful bank authorized to do business even though its application may have been approved by the Comptroller. Cf. *Commercial State Bank of Roseville v. Gidney*, *supra*, citing *National Bank of Detroit v. Wayne Oakland Bank*, 252 F. 2d 537 (6th Cir. 1958), *cert. denied*, 358 U.S. 830. Until the issuance of a certificate, a National bank, whether still on paper, or organized, is still in an embryonic stage. It is the very validity of the issuance of such a certificate which is at issue in this case.¹

D. Section 3(5) of Louisiana Law 275 of 1962 therefore acts as a bar to the issuance of any certificate of authority to the Appellant, Whitney National Bank in Jefferson Parish.

In the preceding sections of this brief, it has been established that Section 3(5) of Louisiana Law 275 of

¹ This discussion also disposes of an additional constitutional issue raised by the Appellant, Whitney National Bank in Jefferson Parish, to the effect that the chartering of a National bank constitutes a contract between the Federal Government and the bank, and the Louisiana statute constitutes an impairment of the obligation of that contract contrary to Article I, Sec. 10, Cl. 1 of the Constitution. The short answer to that contention is that the Whitney National Bank in Jefferson Parish has no certificate of authority and if the issuance thereof would be unlawful by reason of an exercise of power by Louisiana reserved to it by Congress, there is no valid "contract" to be impaired. See also, the *Braeburn* case, pp. 17-18 *supra*, 15 Ill. 2d at pp. 64-65, 153 N.E. 2d at pp. 811-12.

1962 is a constitutional exercise of the power reserved to the States by Section 7 of the Bank Holding Company Act of 1956. It follows, therefore, that it would be unlawful for the Comptroller to issue a certificate of authority to the Appellants, Whitney National Bank in Jefferson Parish, authorizing it to open for business in contravention to Section 3(5) of Louisiana Law 275 of 1962.

This case, of course, does not involve any challenge to the exercise of the discretion of the Comptroller, *e.g.*, whether Jefferson Parish is in need of an additional banking facility. The *Amicus Curiae* agrees that the reasonable exercise of that discretion is not subject to judicial review. *But*, just as "there is no discretion in the Comptroller to approve the establishment of a branch office (of a National bank) at a location prohibited by law", *Commercial State Bank of Roseville v. Gidney, supra*, there is no discretion in the Comptroller to approve the establishment of a new bank prohibited by law. The law involved in the *Roseville* case was a State statute incorporated into the branch banking provisions of the National Bank Act, 44 Stat. 1228-29 (1927), as amended, 12 U.S.C. § 36(c) (1958). The law here involved is Section 3(5) of Louisiana Law 275 reflecting a constitutional exercise of the power reserved to the States by Section 7 of the Bank Holding Company Act. The Comptroller may take no action in violation of that law just as he may not take any action in violation of any of the many State prohibitory statutes which are specifically incorporated into the National Bank Act, or which are applicable to National banks by reason of the fact that they do not conflict with the National Bank Act. (pp. 8-10, *supra*).

II. THE COMPTROLLER OF THE CURRENCY IS ADDITIONALLY BARRED FROM ISSUING A CERTIFICATE TO THE WHITNEY NATIONAL BANK IN JEFFERSON PARISH, BECAUSE IT WOULD VIOLATE SECTION 36(c) OF THE NATIONAL BANK ACT WHICH ESTABLISHES STATE LAW AS THE STANDARD BY WHICH BRANCHES OF NATIONAL BANKS MAY BE ESTABLISHED.

A. *This question must be considered within the framework of the Congressional policy on branching.*

1. Congress has determined that the integrity of the dual banking system depends upon competitive equality between National and State banks in the matter of branching, and that such competitive equality is to be achieved by requiring the Comptroller to follow State law as the standard for the establishment of branches of National banks.

One of the most controversial questions to arise in the banking industry has been that of the establishment of branch banks. Between 1864 and 1927 the National Bank Act did not provide for the establishment of branches by National banks, a restriction which was rigidly enforced. *First National Bank in St. Louis v. State of Missouri, supra*. There was mounting pressure for the authority to establish such branches, however, both by advocates of branch banking and by the Comptroller of the Currency who felt that the very existence of the National banking system was threatened by the competitive advantage held by State banks authorized by State law to establish branches.¹

¹ *E.g.*, the 1922 Annual Report of the Comptroller of the Currency stated at p. 4: "... we are in grave danger of losing our larger national banks in states where more liberal charters are granted to state banks unless we extend to national banks the

National banks are, as noted above, instrumentalities of the Federal Government and are subject to the paramount authority of the United States. Congress has the power to authorize National banks to establish branch banks regardless of State law. It, therefore, *could* have authorized National banks to establish branches and have left it up to the then 48 State legislatures to achieve competitive equality of their State banks with National banks by conforming their branching provisions to the National Bank Act. However, Congress did *not* do so. It "... adopted state law as a measuring stick for the establishment of branches by national banks. 12 U.S.C. Section 36(c)". *Commercial State Bank of Roseville v. Gidney, supra*. Or, as stated by the Court of Appeals for the Sixth Circuit:

"The history of federal legislation regarding branch banking and the statutes applying thereto leave a clear and definite impression that Congress intended, with respect to the location of branches, that a national bank should have no greater rights than it would if it were a state bank, and that a national bank was to be permitted to establish and operate a branch in a state only at such a point as it could, by express provisions of a state statute, establish and operate a branch if it were then a state bank." *National Bank of Detroit v. Wayne Oakland Bank, supra*, 252 F. 2d at p. 540.

privilege and facilities in carrying on their business that are accorded to state banks." The 1923 Report (pp. 4-17) contained an exhaustive coverage of this matter and flatly stated at p. 6: "If, however, state member banks engage in unlimited branch banking, it will mean the eventual destruction of the national banking system. . . ." The 1924 Report (pp. 3-6) said at p. 4: "The question as to whether national banks may be granted the opportunity to meet the competition of state banks in intracity banking in my opinion involves the question of the perpetuation of the national banking system."

This competitive equality was achieved by the McFadden Act of 1927¹ and the Banking Act of 1933.² Throughout the course of the debates on this legislation it was recognized that such competitive equality was imperative if the dual banking system was to survive. For example, in the debates on the McFadden Act of 1927, Representative McFadden, speaking on the floor of the House stated that "... this permission for National banks to meet the competition of State banks engaged in branch banking in certain large cities is absolutely vital to the maintenance of the National banking system." 65 Cong. Rec. 11298 (1924). Conversely, a proposal of the Senate Banking and Currency Committee in 1932 to allow National banks to establish branches irrespective of State law was vigorously opposed as resulting in the possible "elimination of the unit State bank", and destruction of the dual banking system.³ The bill was

¹ In the McFadden Act, Congress amended the National Bank Act to authorize National banks to establish branches in the municipality wherein their main offices were located "if such establishment and operation are at the time [expressly authorized] permitted to State banks by the law of the State in question; . . ." 44 Stat. 1228 (1927), 12 U.S.C. §36(c) (1958). At the same time Congress restricted further branch expansion of State banks, which had elected to become members of the Federal Reserve System, by amending the Federal Reserve Act to prohibit new branches outside of the corporate limits of the municipality in which the main office was located. 44 Stat. 1229 (1927), 12 U.S.C. § 321 (1958).

² In the Banking Act of 1933, National banks were permitted to establish branches outside the municipality in which the main office was located "if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks . . ." 48 Stat. 189 (1933), 12 U.S.C. § 36(c) (1958). At the same time the restriction was removed on branches of State banks which were members of the Federal Reserve System, previously imposed by the McFadden Act of 1927. 48 Stat. 164 (1933), 12 U.S.C. § 321 (1958).

³ S. Rep. No. 584, 72nd Cong. 1st Sess. (1932); See, also, floor debates at 75 Cong. Rec. 9890, 13,002 (1932); 76 Cong. Rec. 1449, 1997, 2079, 2080, 2090, 2205, 2206 (1932).

passed *only* after the adoption of a floor amendment whereby National banks could establish branches only when authorized to State banks by the law of the State in question.¹

The foregoing brief review of the legislative history of the branch banking provisions of the National Bank Act demonstrates beyond argument that one of the *fundamental* policies of that Act, emerging after years of contention and debates, is that there *must* be competitive equality between National and State banks in the matter of branching. Congress achieved this competitive equality by requiring the Comptroller to follow State law as the standard for the establishment of branches by National banks.

2. If a Louisiana State bank, similarly situated to the Whitney Bank of New Orleans, endeavored to establish a holding company system, one of whose subsidiaries would be a "new bank" in Jefferson Parish, an application for certificate authority to open the "new bank" would be rejected on the grounds that it was, in reality, a forbidden branch.

All parties agree that neither a National nor a State bank, with its principal office in New Orleans and with capital in excess of \$100,000, could establish a branch in neighboring Jefferson Parish in view of the branch banking provisions of Louisiana Law. La. Rev. Stat., tit. 6, c. 1, § 54 (1950).

¹ 76 Cong. Rec. 1997, 2205, 2208, 2517 (1932). This amendment was never finally enacted into law because the bill itself did not pass the House prior to the expiration of the 72nd Cong. It was, however, included in a bill substituted for H.R. 5661 by the Senate Banking and Currency Committee, S. Rep. No. 77, 73rd Cong. 1st Sess. on S. 1631, p. 11 (1933), which did pass the following year, with the language on this matter emerging from the Conference Report. H.R. Rep. No. 254, 73rd Cong., 1st Sess., p. 29 (1933).

The Attorney General of Louisiana has construed these branch banking provisions of Louisiana law within the factual context of this case. He has ruled

“ . . . that a bank holding company may not circumvent the branch bank laws of our State by the acquisition of a controlling interest in a subsidiary which is located in a parish other than the domicile of the parent company.” (J.A. 164).

Accordingly, a State bank, similarly situated to the Whitney National Bank of New Orleans could *not* utilize the procedure which Whitney of New Orleans has followed to secure an office in Jefferson Parish. An application for such an office by a State bank in the form of a “new bank” would be rejected as a forbidden branch.

3. A certificate issued to the Whitney National Bank of Jefferson Parish would therefore violate the fundamental policy of competitive equality established by Congress in Section 36(c) of the National Bank Act.

It follows from what has been said above that unless the Comptroller is required to follow the construction which the State of Louisiana has given to its own branch banking law, which is incorporated into the branch banking provisions of the National Bank Act in 12 U.S.C. § 36(c), the competitive equality between State and National banks in Louisiana which Congress has consistently sought to preserve will be negated.

It should be noted here that the *Amicus Curiae* is making no broad contention that *every* subsidiary of a bank holding company in *every* State which prohibits or restricts branch banking is violative of the provisions of 12 U.S.C. §36(c). There is no *national* policy on branching. Congress has left the formulation of branch banking policy to each of the 50 States. Congress felt the lack of uniformity in branching which such a policy introduces is outweighed by the desirability of local de-

termination based on local conditions and geared to local policy. It therefore may be that some States do not consider a subsidiary of a bank holding company as violative of their branch banking laws. This is a matter for *State* determination. The State of Louisiana, however, speaking through its Attorney General, has held that such a subsidiary would constitute an unlawful evasion of the branch banking laws of the State of Louisiana. And, as noted above, unless the Comptroller is required to follow that construction of Louisiana branch banking law which is incorporated into the National Bank Act, the fundamental policy of competitive equality established by Congress in that Act will be negated.

The question that remains, therefore, is whether Congress intended such a result. If not, then, as will be noted later, this Court must pierce the corporate veil and declare the issuance of a certificate of authority to the Whitney National Bank in Jefferson Parish unlawful.

B. Congress did not intend, or contemplate, the evasion of the branch banking laws of Louisiana by the transaction here involved.

It has been demonstrated above that Congress has enunciated a clear and unequivocal policy in favor of competitive equality in the matter of branching; that such competitive equality is to be achieved by requiring the Comptroller to follow State law; and that under the law of Louisiana, as construed by its Attorney General, the issuance of a certificate to the Whitney National Bank in Jefferson Parish would violate that policy.

It should be obvious just from the foregoing, that Congress did *not* intend that National banks in Louisiana, frustrated in their efforts to establish a branch forbidden by State law, could achieve the same result through the bank holding company route. Attention should, therefore, be turned to the countervailing considerations upon

which Appellants rest their contention that Congress did intend such an "out" for National banks wishing to avoid State branch banking laws.

1. Bank Holding Company Act of 1956

The Appellants point to the fact that the Senate struck a provision contained in the House version of the Bank Holding Company Act which would automatically apply State laws concerning branch banking to bank holding company operations. This, they contend, is conclusive of a Congressional expression that there is a vast difference between group and branch banking and, therefore, that a subsidiary of a bank holding company can *never* be a forbidden branch under 12 U.S.C. § 36(c). This argument does not hold up when the matter is considered in depth.

The conclusion of Congress that there is a difference between group and branch banking was reached within the framework of bank holding companies as they existed at that time. Mr. Belgrano, the President of Trans-america Corp., one of the largest of the bank holding companies, described such bank holding companies as follows:

"Individuals with funds to invest usually distribute their shareholdings among several different enterprises. They may invest in a single type of business or among different businesses. . . .

Bank holding companies follow this same general pattern. There are approximately 34 bank holding companies today. . . .

Like an individual, bank holding companies are interested in having sound and profitable investments. In varying ways and in varying degrees the companies lend financial and other assistance to the concerns whose shares they hold; . . ."¹

¹ Hearings Before the House Committee on Banking and Currency, "Control and Regulation of Bank Holding Companies", 84th Cong., 1st Sess., p. 283 (1955).

The distinctions between group and branch banking have significance when considered within the context of a bank holding company of this type. Opposition to an arbitrary tie-in of branch bank laws to approval of bank holding companies developed during the course of the hearings on the Bank Holding Company Act on the grounds that, *because of those distinctions, a State might wish to handle group and branch banking in a different manner and that it should not have to be bound by its branch banking policy in dealing with group banking.* Chairman Martin of the Federal Reserve Board so testified:

"As the Board has previously indicated, it believes that regulation of bank holding company groups should not be related to the branch banking laws of the States and *that the States should be left free to deal differently, if they desire, with these two types of multiple office banking.*" (Emphasis supplied)¹

There is simply no resemblance between the typical bank holding company organized for investment purposes, usually over a large economic area, which Mr. Belgrano described and which *can* be distinguished from branch banking, and the transaction here involved wherein a single bank, admittedly *solely* for the purpose of avoiding State branching laws, set out to capitalize a holding company, and, through it, an affiliate in an adjoining Parish. This absolute dissimilarity is seen in even sharper focus when it is recognized that bank holding companies are *not* common. There were *only* 43 bank holding companies in the entire United States registered under the Bank Holding Company Act as of December 31, 1961, 48 Fed. Reserve Bull., p. 762 (1962), which is *less* than there were the preceding year, 47 Fed. Reserve

¹ *Ibid.*, p. 17. See also, Hearings Before a Subcommittee of the Senate Committee on Banking and Currency, "Control of Bank Holding Companies," 84th Cong., 1st Sess., pp. 47-48, 77-78 (1955).

Bull., p. 722 (1961), and compares with the 44 bank holding companies which were registered at the end of 1957, the first full year during which the Bank Holding Company Act was in effect.¹ Surely if Congress had intended, by its rejection of the House proposal to provide a tie-in of branch banking laws with bank holding company approval, to give a green light to banks which wished to avoid the statutes of the 32 States which prohibit or restrict branch banking (Appendix D) by organizing bank holding companies, there would be more than just 43 bank holding companies registered under the Bank Holding Company Act in all of America today—less than there were in the first full year after the Act was passed.

The fact of the matter is that there is *nothing* in the legislative history of the Bank Holding Company Act which can be cited to support a Congressional intent that such a transaction is *automatically* valid, and that no Court in the land may *ever* look through it to see whether it unlawfully evades the branch banking provisions of the National Bank Act, 12 U.S.C. § 36(c). In this connection the *Amicus Curiae* agrees fully with the Court of Appeals for the Ninth Circuit in *First National Bank in Billings v. First Bank Stock Corp.*, 306 F. 2d 937, 942 (9th Cir. 1962) when it said:

“We do not agree with appellees that the fact that the two banks are separate corporate organizations demonstrates conclusively that one is not a branch of the other. In the banking field, as elsewhere, courts have power to ‘pierce the corporate veil’ when the realities require it.”²

¹ “Recent Developments in the Structure of Banking”, Special Staff Report of the Board of Governors of the Federal Reserve System submitted to the Select Committee on Small Business, United States Senate. Committee Print 87th Cong., 2nd Sess., p. 9.

² The opinion is attached as Appendix B to the Supplemental Memorandum of Points and Authorities in Support of Defendant Comptroller’s Motion for Summary Judgment.

2. The *Billings* Case

Both Appellants rely upon the *Billings* case, *supra*, to support their contention that the Whitney National Bank in Jefferson Parish cannot be considered a forbidden branch. However, as demonstrated in the quote from the opinion in that case set forth immediately above, *Billings* sustains the very principle of law for which the *Amicus Curiae* contends.

The *Billings* court did not hold that as a matter of law, either because of the Senate rejection of the House version of the Bank Holding Company Act providing a tie-in of branch banking law with bank holding company approval, or because of *Camden Trust Co. v. Gidney*, 112 App. D.C. 197, 301 F. 2d 521 (1962), *cert. denied*, 369 U.S. 886, that a subsidiary of a bank holding company could *never* be a forbidden branch. It held, as the *Amicus Curiae* urges, that a court may disregard corporate entities where they are made the implement for avoiding a clear legislative purpose.

3. The *Camden Trust* case.

Finally, Appellants rely upon the *Camden Trust* case, *supra*, as authority for their proposition that the Whitney National Bank in Jefferson Parish cannot be considered a forbidden branch.

Camden Trust does not constitute a precedent for this case. *Camden Trust* involved chain banking and held that such an affiliate falls within the category of an independent bank. This case involves *group* banking. This distinction is very important, as will now be demonstrated.

Group and chain banking are *not* the same in one vital element, namely, that of control. Governor Robertson of the Federal Reserve Board, who defined the three different types of multiple office banking (branch, chain,

and group) for the House Banking and Currency Committee, made this point very clear. He pointed out that control in a chain banking system has the inherent limitation of *terminating* when stock ownership is dispersed through sales or through disposition in estates of the stockholders.¹ On the other hand, group banking, involving corporate rather than individual stock control of one or more banks, has no such limitation. Indeed, it was *because* of this distinction, and the desire to lock in control of Whitney-Jefferson, that Whitney-New Orleans chose the holding company rather than the affiliate route utilized in *Camden Trust*.²

Accordingly, it is possible to contend that whatever the factual circumstances might have been surrounding the formation of a *Camden Trust* chain bank type affiliate, it cannot be considered a branch because the element of control can disappear with time. Such is not the case with the group banking transaction here involved where control is "locked in" in perpetuity. Accordingly, the *Camden Trust* case, involving chain banking, does *not* stand for the proposition that a subsidiary of a bank holding company can *never* be considered a forbidden branch.

¹ Hearings Before the House Committee on Banking and Currency, "Control and Regulation of Bank Holding Companies," 84th Cong., 1st Sess., pp. 84-85 (1955); Hearings Before a Subcommittee of the Senate Committee on Banking and Currency, "Control of Bank Holding Companies", 84th Cong., 1st Sess., p. 73 (1955).

² The President of the Whitney National Bank of New Orleans testified before the Federal Reserve Board as follows: "As we see it, in an affiliate relationship, we have no way of knowing or no way to prevent the stock of the two institutions from drifting apart." (J.A. 71) See also, a letter from the President of Whitney National Bank to its stockholders dated October 28, 1961. (J.A. 32)

- C. *This Court has the power to pierce the corporate veil to determine whether a new National bank is, in reality, a forbidden branch, and, when it does so, it must find that under the facts of this case, and under the law of Louisiana incorporated into the branch banking provisions of Section 36(c) of the National Bank Act, the Whitney National Bank in Jefferson Parish is, in reality, such a forbidden branch, and the issuance of a certificate of authority to it would, therefore, be unlawful.*

At pp. 20-24, *supra*, *Amicus Curiae* demonstrated that a fundamental legislative purpose of the National Bank Act was the establishment of competitive equality between National and State banks in the matter of branching; that Congress achieved that competitive equality by requiring the Comptroller to follow State law as the standard for the establishment of branches of National banks; and that, under Louisiana law, if a Louisiana State bank, similarly situated to the Whitney National Bank of New Orleans followed the program it did here, an application for a new bank in Jefferson Parish would be rejected as a forbidden branch.

In the immediately preceding section of this Brief (pp. 25-30) the *Amicus Curiae* has also demonstrated that there is no bar, as a matter of law, to this Court's following the principle that ". . . corporate entities may be disregarded where they are made the implement for avoiding a clear legislative purpose . . ." *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946).

This principle, of course, is firmly embedded in the law of the land. See 1 Fletcher, *Cycl. Corps.*, § 45 (1931, Supp. 1960) and cases cited therein. Thus, two corporations with the same stockholders and having, with minor differences, the same officers and directors, will not be treated as two corporations when ". . . to retain them would circumvent the plain and unambiguous intent of a

prohibitory Congressional enactment." *Ohio Tank Car Co. v. Keith Ry. Equipment Co.*, 148 F.2d 4, 6 (7th Cir. 1945), *cert. denied*, 326 U.S. 730. Further, stockholders in a National bank may not organize a holding company to which they transfer stock under circumstances indicating that they hope to evade their statutory liability for debts of a National bank under the National Bank Act. *Metropolitan Holding Co. v. Snyder*, 79 F.2d 263 (8th Cir. 1935). The court there stated at p. 267, after a review of the federal cases in the field, that "particularly where a corporation is interposed to defeat or circumvent a statute, the courts have looked beyond [the] corporate entity to ascertain the purposes for which it was organized and the persons identified with that purpose."

The *Amicus Curiae* respectfully submits that when the foregoing principle is applied to the facts of this case, this Court can, and must, find that the Whitney National Bank in Jefferson Parish is, in fact, a forbidden branch. The whole transaction was entered into *solely* to avoid Louisiana branch banking law;¹ there can be no doubt that a fundamental purpose of the National Bank Act to establish competitive equality in branching between National and State banks is here being subverted; and, in the words of the *Billings* court, this Court can, and must, find that Whitney-Jefferson is doing business through the instrumentality of Whitney-New Orleans, or vice versa, in the same way as if the institutions were one.

The Federal Reserve Board did, in fact, pierce the corporate veil in considering the application of the Whitney Holding Corporation. In its opinion *In the Matter of the Application of Whitney Holding Corporation*, dated May 3, 1962, the Board said:

¹ The President of the Whitney National Bank of New Orleans testified before the Federal Reserve Board that "If branch banking were permitted in Jefferson Parish, I wouldn't be here because it would be much simpler to have it by way of a branch." (J.A. 74)

"The stated purpose of the proposed holding company system is to enable an organization centered about Whitney New Orleans to provide banking services not only through its existing 12 offices within the City of New Orleans but also through offices in the East Bank of Jefferson Parish. The holding company system will be under the direction of the present executive management of Whitney New Orleans; *in fact, for present purposes the holding company itself is simply the means by which Whitney banking offices may be established and operated in East Bank.* Consequently, the character of the management and the prospects of the Applicant and its two proposed subsidiary banks may be evaluated largely on the basis of the financial history and condition, character of management, and prospects of Whitney New Orleans." (J.A. 100-101) (Emphasis supplied)

* * * *

"To the extent that the prospects of Whitney Jefferson depend upon the quality of its management, those prospects also are favorable, since Whitney Jefferson will be subject to general policy direction by Applicant, and Applicant may be expected to provide competent local management for Whitney Jefferson." (J.A. 101)

Thus the Federal Reserve Board found that Whitney-Jefferson is simply the means by which "Whitney banking offices" may be established on the East Bank of the Mississippi in Jefferson Parish. This Court, based upon that finding alone, can reach the conclusion that even though Whitney-Jefferson and Whitney-New Orleans are separate corporations, Whitney-Jefferson is merely an office of Whitney-New Orleans on the East Bank.¹

¹ It should be noted that the Federal Reserve Board did not pass upon the question of whether Whitney-Jefferson would constitute an unlawful branch of Whitney-New Orleans. It considered the resolution of such a question as falling within the province of the Comptroller (J.A. 168). It is the validity of the Comptroller's decision on this matter which, of course, is the sole issue before this Court.

As such, Whitney-Jefferson is a forbidden branch of Whitney-New Orleans, and the Comptroller is barred, as a matter of law, from the issuance of a certificate under the branch banking provisions of the National Bank Act, 12 U.S.C. § 36(c). *Commercial State Bank of Roseville v. Gidney, supra*; *National Bank of Detroit v. Wayne Oakland Bank, supra*.

CONCLUSION

The *Amicus Curiae* respectfully submits that the Comptroller of the Currency has no statutory authority whatever to grant a certificate of authority to the Whitney National Bank in Jefferson Parish. The issuance of such a certificate would patently violate the provisions of Louisiana Law 275 of 1962, passed under a reservation of power by Congress to the States in Section 7 of the Bank Holding Company Act. The issuance of such a certificate would also constitute a manifest and unlawful evasion of the fundamental policy of Congress set forth in the branch banking provisions of the National Bank Act, by which the Comptroller is bound.

The *Amicus Curiae* urges this Court to so find.

Respectfully submitted,

/s/ James F. Bell
JAMES F. BELL

Attorney for Amicus Curiae

APPENDIX A

Summary Of State Laws Affecting Bank Holding
Companies (1963)States Restricting or Prohibiting Bank Holding
Companies

State:

Georgia

Code of Georgia Anno., Sections 13-201.1, 13-207,
enacted February 9, 1960*.¹

Illinois

Smith-Hurd Ill. Anno. Stat., Ch. 16-1/2, Sections
71 through 76, enacted July 5, 1957.²

Indiana

Burns Ind. Stat. Anno., Sections 18-1814 through
18-1817, enacted March 12, 1957.³

Kansas

Gen. Stat. of Kansas Anno., Sections 9-504
through 9-507, enacted June 29, 1957.³

Kentucky

Ky. Revised Stat., Section 287.030, enacted in
1938.⁴

Louisiana

La. Revised Stat., Title 6, Ch. 12, Sections 1001
through 1006, enacted July 10, 1962.⁵

Michigan

Michigan Stat. Anno., Section 21.10, enacted Oc-
tober 17, 1933. (See *Peoples Savings Bank v.*
Stoddard, 359 Mich. 297, 102 N.W. 2d 777, 792
(Supreme Court, 1960) (dictum) for applicability
to National banks)

State:

Mississippi

Miss. Code, Section 5235, enacted April 2, 1934.

Nebraska

Legislative Bill 59, enacted 73rd Sess. 1963.³

New Jersey

N. J. Stat. Anno., Sections 17:9A-344 through 17:9A-354, enacted June 5, 1957.⁶

Oklahoma

H. B. No. 533, enacted March 11, 1963.²

Pennsylvania

Purdon's Pa. Stat. Anno., Title 7, Sections 851 through 855, enacted July 11, 1957.³

South Carolina

Code of Laws of S.C., Section 12-77, enacted March 13, 1940.⁷

Vermont

Vermont Stat. Anno., Title 11, Section 131, enacted April 1, 1915.

Washington

Revised Code of Wash., Section 30.04.230, enacted February 27, 1933.⁵

West Virginia

W. Va. Code Anno., Section 3220, enacted February 28, 1959 (effective in 90 days).

States Permitting Bank Holding Companies With State Approval

State:

Florida

Fla. Stat. Anno., Section 659.14, enacted May 20, 1953.

Massachusetts

Mass. Gen. Laws Anno., Ch. 167A, Sections 1 through 7, enacted September 21, 1957.

New York

Book 4, Banking Law, Art. III-A, Sections 141-147, first enacted January 29, 1957.

NOTE: The statutes of twelve states expressly include National banks. The statute of Florida is specifically limited in its application to State banks. The statutes of Louisiana, Michigan, and Mississippi apply generally to all banks doing business in those states. The Vermont statute speaks of "corporations", while the statutes of Kentucky and West Virginia present interpretative questions as to the extent of their coverage.

¹ Company cannot acquire more than 5% of the stock of two or more banks.

² Company cannot acquire more than 15% of the stock of two or more banks.

³ Company cannot acquire more than 25% of the stock of two or more banks.

⁴ Company cannot acquire more than 50% of the stock of a bank.

⁵ Company cannot acquire more than 25% of the stock of a bank.

⁶ Company owning more than 25% of the stock of a bank cannot acquire more than 10% of the stock of another bank.

⁷ Company cannot acquire more than 49% of the stock of a bank.

* The date of enactment is in each case the date that the statute presently effective became effective in its original form.

APPENDIX B

Summary of State Laws Restricting Or Prohibiting Bank
Holding Companies Prior to the Passage of the
Bank Holding Company Act of 1956¹

State:

Georgia

Ga. Laws 1956, Vol. 1, pp. 309-312, enacted February 27, 1956. See Appendix C.²

Illinois

Ill. Laws 1955, 69th Gen. Assembly, at pp. 1372 and 1373, enacted July 11, 1955. Company cannot acquire more than 15% of the stock of two or more banks.³

Kentucky

See Appendix A.

Michigan

See Appendix A. Corporation may not hold bank stock unless it was acquired as part of a plan of reorganization.

Mississippi

See Appendix A. Prohibits bank holding companies.

South Carolina

See Appendix A.

Vermont

See Appendix A.

State:

Washington

See Appendix A.

West Virginia

See Appendix A. Prohibits bank holding companies.

¹ May 9, 1956.

² These sections, quoted in Appendix C, were repealed on February 9, 1960, when the presently effective Section 13-207 was enacted.

³ Repealed on July 5, 1957, when the presently effective Sections 71-76 were enacted.

APPENDIX C

GEORGIA BANK HOLDING COMPANY
ACT OF 1956

"BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA
AS FOLLOWS:

SECTION 1. The maintenance of competitive services between banks has been found to be the best method of serving the public. There are dangers in the concentration of economic power through centralized control of banks. It is, therefore, held to be in the public interest to curtail such concentration of economic power by preventing the expansion of bank holding companies and similar organizations.

SEC. 2. Unless the context requires otherwise: (a) 'Bank' means any national bank or State bank, banking association, savings bank or trust company, whether organized under the laws of Georgia, the laws of another State, or the laws of the United States, doing business in the State of Georgia.

(b) 'Company' means any bank, corporation, partnership, joint stock company, business trust, voting trust, association or similarly organized group of persons, whether incorporated or not, and includes the shareholders and those persons who otherwise own the company and including any foreign corporation or other organization or association doing business in Georgia, but shall not include any corporation or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(c) 'Bank holding company' means any company incorporated or organized under the laws of the State of Georgia or doing business in Georgia, which directly or indirectly owns, controls or holds, with power to vote, 15 percent or more of the voting stock of each of 2 or more banks.

(d) A company will be construed to own, control or hold, with power to vote, stock indirectly whenever any officer or shareholder of such company or any natural person included within the definition of 'company' in section (b) of this Act or any member of the immediate family of such officer or shareholder or of such natural person, shall own, control or hold, with power to vote, such stock. Immediate family includes a spouse, children, mother, father, brother, and sister.

SEC. 3. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, such voting stock as it owns, controls, or holds on the effective date of this act. Also, in municipalities now having branches of a bank with a holding-company relation, such bank may make branches of existing holding-company banks; and in the future in cities of over 80,000 population, according to the 1950 or subsequent census, now having branches of a bank, present branches will have the same privilege of additional branches as permitted to other banks.

SEC. 4. It shall be unlawful for any company directly or indirectly to own, control, vote, or hold, with power to vote the same, 15 percent or more of the voting stock of a bank holding company, except that it shall not be unlawful for a company to continue to own, control, vote, or hold, with power to vote, that stock of a bank holding com-

pany which it owns, controls, or holds on the effective date of this act.

SEC. 5. It shall be unlawful for any company hereafter to acquire, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, except that it shall not be unlawful for any company to acquire, with power to vote the same, any stock in banks, a majority of whose voting stock such company owns, holds, or controls on the effective date of this act.

SEC. 6. It shall be unlawful for any company to acquire, with power to vote the same, 15 percent or more of the voting stock of a bank holding company.

SEC. 7. It shall be unlawful for any foreign company owning, controlling, or holding, with power to vote the same, 15 percent or more of the voting stock of each of 2 or more banks, to vote more than 15 percent of the stock of more than 1 such bank in any 1 year, except that it shall not be unlawful for a company to vote that voting stock which it owns, controls, or holds on the effective date of this act.

SEC. 8. This act shall not apply to the holding by a company in respect of its owning, controlling, or holding, with power to vote, stock in a bank or banks or bank holding company or companies in a fiduciary capacity, unless such stock is held for the benefit of another company or for the benefit of a majority of the stockholders of such bank.

SEC. 9. Any company which violates any provision of this act shall, upon conviction, be fined not less than \$500 nor more than \$1,500. Each day on which such violation occurs will constitute a separate offense.

SEC. 10. If any provision of this act or the application of any such provision to any person or circumstance

shall be held invalid, the remainder of the act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be effected thereby.

SEC. 11. All laws and parts of law in conflict with this act hereby are repealed.

(Ga. Laws 1956, Vol. 1, pp. 309-312. Repealed February 9, 1960. See Code of Ga. Anno., Section 13-207.)

APPENDIX D

Summary Of Branch Banking Statutes Of The 50 States,
Puerto Rico, and Virgin IslandsStates Permitting Statewide Branch Banking

<u>State</u>	<u>Citation</u>
Alaska	Sess. Laws of Alaska, Section 3.208
Arizona	Arizona Revised Stat. Anno., Sec. 6-223
California	Calif. Financial Code Anno., Sec. 500
Connecticut	Gen. Stat. of Conn., Revision of 1958, Sec. 36-59
Delaware	2 Del. Code Anno., Title 5, Sec. 770
Hawaii	Revised Laws of Hawaii, Sec. 178-39
Idaho	Idaho Code, Sec. 26-1001
Louisiana	La. Revised Stat., Title 6, Sec. 54
Maryland	Anno. Code of Md. 1957, Art. 11, Sec. 65
Nevada	Nevada Revised Stat. Title 55, Ch. 660, Sec. 660.010
North Carolina	Gen. Stat. of N.C., Sec. 53-62
Oregon	Oregon Rev. Stat., Sec. 714.020
Rhode Island	Gen. Laws of R. I., Sec. 19-1-13
South Carolina	Code of Laws of S.C., Sec. 8-57
South Dakota	S.D. Code of 1939, Sec. 6.0402
Utah	Utah Code Anno., Sec. 7-3-6
Vermont	Vermont Stat. Anno., Title 8 Sec. 501
Washington	Revised Code of Wash., Sec. 30.40.020
Puerto Rico	Laws of P.R. Anno., Title 7, Sec. 111 (i)

States Permitting Branch Banking Within Limited Areas

Alabama	Acts of 1953, 1955, 1957; Code of Alabama, Sec. 125 (1)
Georgia	Code of Ga. Anno., Sec. 13-203.1
Indiana	5 Burns Ind. Stat. Anno.. Sec. 18-1707

<u>State</u>	<u>Citation</u>
Kentucky	Ky. Revised Stat., Sec. 287.180
Maine	Revised Stat. of Maine, Ch. 59, Sec. 19-C (1961 Supp.); Ch. 59, Sec. 124 (1961 Supp.)
Massachusetts	Mass. Gen. Laws Anno., Ch. 172, Sec. 11 (1961 Supp.) Ch. 172 A, Sec. 12
Michigan	Mich. Stat. Anno., Secs. 23.762, 23.762(1)
Mississippi	Miss. Code, Secs. 5228, 5229
New Jersey	N.J. Stat. Anno., Sec. 17:9A-19
New Mexico	N.M. Stat. Anno., Sec. 48-2-17
New York	Book 4, Banking Law, Sec. 105
Ohio	Page's Ohio Revised Code Anno., Sec. 1103.09
Pennsylvania	Purdon's Pa. Stat. Anno., Title 7, Sec. 819-204.1
Tennessee	Tenn. Code Anno., Sec. 45-211
Virginia	Code of Va., Art. 3, Sec. 6-26

States Prohibiting Branch Banking

Arkansas*	Ark. Stat. 1947 Anno., Sec. 67:319
Colorado	Colo. Revised Stat., Sec. 14-13-1
Florida	Fla. Stat. Anno., Sec. 659.06
Illinois	Smith-Hurd Ill. Anno. Stat., Ch. 16-1/2, Sec. 106
Iowa*	Ia. Code Anno., Sec. 528.51
Kansas*	Gen. Stat. of Kansas Anno., Sec. 9-111 (1959 Supp.)
Minnesota	Minn. Stat. Anno., Sec. 48-34
Missouri*	Vernon's Anno., Mo. Stat., Sec. 362.105
Montana*	Revised Codes of Mont. Anno., Sec. 5-1028
Nebraska*	Revised Stat. of Neb., Sec. 8-1,105
North Dakota*	N. D. Revised Code, Sec. 6-03-14
Oklahoma*	Okla. Stat. Anno., Title 6, Ch. 19, Sec. 461

<u>State</u>	<u>Citation</u>
Texas	Vernon's Civil Stat. of Texas Anno., Art. 342-903
West Virginia	W. Va. Code Anno., Sec. 3131
Wisconsin*	West's Wisc. Stat. Anno., Sec. 221.04

States With No Legislation Authorizing Branch Banking

New Hampshire
Wyoming
Virgin Islands

* These states permit certain offices with limited powers only.

APPELLEES' REPLY TO APPELLANT COMPTROLLER'S
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
HIS PETITION FOR REHEARING

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH, *Appellant*

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,
Appellees

No. 17,681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY, *Appellant*

v.

BANK OF NEW ORLEANS AND TRUST COMPANY, ET AL.,
Appellees

On Appeals from a Judgment of the United States
District Court for the District of Columbia

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**APPELLEES' REPLY TO APPELLANT COMPTROLLER'S
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
HIS PETITION FOR REHEARING**

Appellant Saxon, the Comptroller of the Currency, has seen fit to attempt to file herein a "supplemental memorandum" in support of his petition for rehearing. That paper is so clearly intended to mislead and confuse that we felt constrained briefly to reply, solely for the purpose of keeping the record straight.

The Comptroller of the Currency must know, *contrary to page 2 of his said memorandum*, that the Federal Reserve Board has *no* jurisdiction to authorize or license Whitney Holding Corporation "to acquire and operate Whitney-Jefferson", the latter being a proposed national banking operation. Under the Federal Bank Holding Company Act (12 U.S.C. 1841 et seq.), the Federal Reserve Board's *sole jurisdiction* is to pass on the *acquisition of bank shares* by the holding company (See 12 U.S.C. 1842 (a), (b)). The Board has *no jurisdiction* to license the proposed national banking operation.

This latter function and jurisdiction is vested in appellant, the Comptroller of the Currency, by the National Bank Act (12 U.S.C. 21-28). Thus, under 12 U.S.C. 26, it is the Comptroller who must determine "whether the association is *lawfully* entitled to commence the business of banking", *not* the Federal Reserve Board. And, under 12 U.S.C. 27, it is the Comptroller, *not* the Board, who is authorized to "withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this chapter" (the National Bank Act). Accordingly, in the past, whenever the courts have found, as this Court has in the case at bar, that a proposed banking operation is violative of 12 U.S.C. 36(c), injunctive relief (to enjoin the licensing of the operation) has been granted against the Comptroller, *not* against the Board (*Commercial State Bank of Roseville v. Gidney*, 174 F. Supp. 770, *affd.* 278 F. 2d 871 (D.C. App. 1960); *National Bank of Detroit v. Wayne Oakland Bank* (C.C.A. 6, 1958), 252 F. 2d 537, *cert. denied*, 358 U.S. 830).

In the instant situation, therefore, the Federal Reserve Board's *sole function*, under the Federal Bank Holding Company Act, was to determine whether it would be lawful for Whitney Holding Corporation *to acquire* the voting

shares of Whitney-New Orleans and Whitney-Jefferson. The Board took *no step* to attempt to license the *opening and operation* of Whitney Jefferson. That function, at law, rested as aforesaid with the Comptroller under the National Bank Act. The Federal Reserve Board, *without holding the hearing* prescribed by the Federal Bank Holding Company Act (12 U.S.C. 1842(b)), entered an order approving Whitney Holding's *acquisition of the stock* in Whitney-Jefferson *only*. Appellees considered that action to be unlawful and improper. When the Federal Reserve Board refused to reconsider the matter, appellees accordingly petitioned the Fifth Circuit for judicial review, under 12 U.S.C. 1848.

But, before that proceeding could even be docketed and briefed, the Comptroller of the Currency moved to license Whitney Jefferson's unlawful opening and operation under the National Bank Act. The instant action was thus brought to enjoin the Comptroller from licensing an operation in violation of the National Bank Act (12 U.S.C. 36c), which he and he *alone* administers.

This action was heard and finally determined by Judge McLaughlin before the matter in the Fifth Circuit came on for argument. In fact, oral argument in this Court preceded argument in the Fifth Circuit by approximately two weeks. When the matter in the Fifth Circuit did later come on to be heard, that Court itself expressed deep interest in Judge McLaughlin's ruling in this action and indicated it would like to be advised of this Court's decision on appeal. Consequently, when this Court rendered its decision, counsel for appellees filed copies of same with the Fifth Circuit. We simply reiterated our prayer "that for reasons set forth in (our) original and reply briefs . . . , the Board's order . . . should be set aside or the matter remanded to the Board with instructions to reverse its order on the basis of the applicable Federal and State laws" (See Comptroller's "Supplemental Memorandum", pg. 5).

In order that this Court will fully understand the proper relationship between its decision in this action and the case in the Fifth Circuit, it should also be made clear that the strange devotion of the Comptroller of the Currency to Whitney's plan for circumvention and violation of the National Bank Act not only led him to attempt to rush to license it into operation. It also caused him to mislead the Federal Reserve Board into dispensing with its statutory hearing on the *stock acquisition phases* of the program under 12 U.S.C. 1842(b); and when the Board later asked him (the Comptroller) to comment on charges that *the whole plan* violated 12 U.S.C. 36c, a provision of the National Bank Act, he, the Comptroller, refused to do so (J.A. 424-426). Appellees accordingly have steadfastly contended that when the Board proceeded to approve the *stock acquisition phases* of the program, absent such advice from the Federal officer charged with administration of the National Bank Act, and in the face of charges that *the whole plan* was in violation of that Act, it likewise acted unlawfully and improperly in approving any phase of the program under the Federal Bank Holding Company Act. Hence, the direct pertinency of the decision of this Court to the proceedings in the Fifth Circuit, and hence, our purpose in lodging copies of same with that Court, and that Court's interest therein.

It remains, however, for the Fifth Circuit to decide, as it properly should, whether the same considerations which impelled this Court to enjoin the Comptroller from licensing the banking operation under the National Bank Act likewise should have prevented the Federal Reserve Board from approving the stock acquisition phases of the program, without even holding the statutory hearing prescribed by 12 U.S.C. 1842, the Federal Bank Holding Company Act. The two cases deal with *different phases* of a common plan to violate federal law. But each is a completely *separate* proceeding, involving *different parties* and *different questions under federal statutes*, and each is

vitally necessary in its own right if the unlawful plan here involved is to be defeated before it takes root.

In this light, it would perhaps be regrettable enough if Whitney sought to salvage its device for circumvention of the law by simultaneously filing baseless papers in this Circuit and the Fifth Circuit, both seemingly aimed at frustrating justice by playing one Court off against the other. But, we are totally at a loss to understand the procedure when we find this being done, in face of the facts and circumstances here involved, by two federal agencies through the Department of Justice.¹

Respectfully submitted,

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Attorney for Appellee Banks

¹ Simultaneously with the filing of the Comptroller's "Supplemental Memorandum" in this Court, the Government filed a brief in the Fifth Circuit contending that Court had no jurisdiction to proceed to the merits of the case there; and that petitioners there were not entitled to judicial review of the Board's action in approving the stock acquisitions.

BRIEF FOR APPELLANT, COMPTROLLER OF THE
CURRENCY

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH,
APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY; GUARANTY
BANK AND TRUST COMPANY; BANK OF LOUISIANA IN
NEW ORLEANS; J. W. JEANSONNE, STATE BANK COM-
MISSIONER OF THE STATE OF LOUISIANA, APPELLEES

No. 17681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY; GUARANTY
BANK AND TRUST COMPANY; BANK OF LOUISIANA IN
NEW ORLEANS; J. W. JEANSONNE, STATE BANK COM-
MISSIONER OF THE STATE OF LOUISIANA, APPELLEES

On Appeals from the United States District Court
for the District of Columbia

JOSEPH D. GUILFOYLE,
Director of Operations,
United States Court of Appeals *Civil Division,*
for the District of Columbia Circuit

FILED APR 25 1963

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CLERK

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QUESTIONS PRESENTED

1. Whether appellees have standing to challenge the issuance of a certificate permitting the opening of a new national bank, when their only damage from that issuance would be possible economic disadvantage resulting from increased competition.

2. Whether a State statute prohibiting the opening for business of banks owned by bank holding companies can validly apply to national banks, when the National Bank Act constitutes a complete system for the establishment and opening of Federal banks, and the Banking Act of 1933 and the Bank Holding Company Act of 1956 provide a comprehensive system for the regulation of bank holding company control of national banks.

3. Whether an affiliate of a bank holding company is to be treated as the branch of a bank within the meaning of the Banking Act of 1933, when it has substantially all of the characteristics which Congress deemed sufficient under that Act and the Bank Holding Company Act of 1956 to justify treating such affiliates differently than branches.

III

INDEX

	Page
Questions presented.....	1
Jurisdictional statement.....	1
Statement of the case.....	2
A. Background:	
1. The National Bank Act	3
2. Unit, branch, chain and group banking and the Banking Act of 1933.....	6
3. The Bank Holding Company Act of 1956.....	9
B. The undisputed facts:	
1. The problem and the plan.....	11
2. Approval of the plan by the Comptroller, the stockholders and the Board.....	14
3. Consummation of the plan.....	17
4. The institution of court proceedings.....	18
5. The adoption of Louisiana Act 275 of 1962.....	19
6. The preliminary injunction, and the final decision..	20
Constitutional provision and statutes involved.....	21
Statement of points.....	21
Summary of argument.....	22
Argument:	
I. Since the only possible injury to appellees from the issuance of a Certificate of Authority would be a prospective increase in competition, appellees have no standing to challenge the administrative determina- tion to issue the Certificate.....	25
II. The district court erred in ruling that the Louisiana Act 275 of 1962 deprived the Comptroller of the Cur- rency of his authority under the National Bank Act to issue a Certificate permitting a duly organized na- tional bank to open for business.....	31
A. Unless authorized to do so by Congress a State has no authority to prevent the issuance of a Certificate of Authority to a national bank, or to prohibit a national bank from opening for business.....	32
B. Neither the Bank Holding Company Act nor the National Bank Act authorizes the States to pro- hibit the opening of national banks or to de- prive the Comptroller of the Currency of the authority to permit a national bank to commence the business of banking.....	35

IV

Argument—Continued

Page

1. The Bank Holding Company Act of 1956 does not authorize a State to prohibit the opening of a national bank within its borders, regardless of its ownership.....	36
2. Since the National Bank Act directs the Comptroller to charter national banks and authorize them to commence the business of banking in accordance with the criteria of federal law only, the States have no authority to prohibit the opening of national banks.....	41
3. The district court erred in holding that the Louisiana Act 275 of 1962 deprived the Comptroller of his authority to permit Whitney-Jefferson to commence the business of banking.....	43
III. The district court's judgment cannot be sustained on the ground that Whitney-Jefferson is a branch of Whitney-New Orleans, because Congress recognized the distinctions between group and branch banking, and did not wish to impose the State restrictions against branch banking upon affiliates of bank holding companies.....	50
Conclusion.....	55
Appendix A	56
Appendix B	64

CITATIONS

Cases:

<i>Alabama Power Co. v. Ickes</i> , 302 U.S. 464.....	26, 27
<i>Alma Motor Co. v. Timken Co.</i> , 329 U.S. 129.....	44
<i>Anderson National Bank v. Lockett</i> , 321 U.S. 233.....	33
<i>Benson v. Schofield</i> , 98 App. D.C. 424, 236 F. 2d 719, certiorari denied, 352 U.S. 976.....	27
<i>Braeburn Securities Corp. v. Smith</i> , 15 Ill. 2d 55, 153 N.E. 2e 806, appeal dismissed, 359 U.S. 311.....	47, 49
<i>Buffalo Third Nat. Bank v. Buffalo German Ins. Co.</i> , 193 U.S. 581.....	45
<i>Camden Trust Co. v. Gidney</i> , 112 U.S. App. D.C. 197, 301 F. 2d 521, certiorari denied, 369 U.S. 886.....	24, 25, 54
<i>Casey v. Galli</i> , 94 U.S. 673.....	34
<i>Commercial State Bank v. Gidney</i> , 174 F. Supp. 770, aff'd 108 U.S. App. D.C. 37, 278 F. 2d 871.....	31
<i>Continental Nat. Bank v. Eliot Nat. Bank</i> , 7 Fed. 369 (C.C.D. Mass.).....	45
<i>Cook County Nat. Bank v. United States</i> , 107 U.S. 445..	5, 43

Cases—Continued

	Page
<i>Cooper v. O'Connor</i> , 69 App. D.C. 100, 99 F. 2d 135.....	5
<i>Davis v. Elmira Savings Bank</i> , 161 U.S. 275.....	33
<i>Deitrick v. Greaney</i> , 309 U.S. 190.....	24, 41, 43
<i>Doty v. First Nat. Bank</i> , 3 N.D. 9, 53 N.W. 77.....	45
<i>Duba v. Schuetzle</i> , 303 F. 2d 570 (C.A. 8).....	27
<i>Earle v. Carson</i> , 188 U.S. 42.....	45
<i>Easton v. Iowa</i> , 188 U.S. 200.....	33
<i>Farmers and Mechanics National Bank v. Dearing</i> , 91 U.S. 29	33
<i>Federal Home Loan Bank Board v. Rowe</i> , 109 U.S. App. D.C. 140, 284 F. 2d 274.....	26, 28
<i>First National Bank of Billings v. First Bank Stock Corp.</i> , 306 F. 2d 937 (C.A. 9).....	24, 54, 55
<i>First National Bank v. California</i> , 262 U.S. 366	32, 33, 34
<i>First National Bank v. First Federal Savings & Loan Ass'n.</i> , 96 U.S. App. D.C. 194, 225 F. 2d 33.....	25
<i>First Nat. Bank v. Lanier</i> , 11 Wall. (78 U.S.) 369.....	45
<i>First National Bank of St. Louis v. Missouri</i> , 263 U.S. 640.....	7
<i>Florida v. Mellon</i> , 273 U.S. 12.....	29
<i>Franklin National Bank v. New York</i> , 347 U.S. 373.....	23, 32, 33, 34, 43, 44, 46
<i>Georgia v. Pennsylvania RR.</i> , 324 U.S. 439	29
<i>Gidney v. Commercial State Bank of Roseville</i> , 108 U.S. App. D.C. 37, 278 F. 2d 871.....	25
<i>Gidney v. Wayne-Oakland Bank</i> , 252 F. 2d 537 (C.A. 6), certiorari denied, 358 U.S. 830.....	30
<i>Gustavsson Contracting Co. v. Floete</i> , 278 F. 2d 912 (C.A. 2), certiorari denied, 364 U.S. 894.....	27
<i>Jennings v. U.S. Fidelity & Guaranty Co.</i> , 294 U.S. 216..	33
<i>Jones ex rel Louisiana v. Bowles</i> , 322 U.S. 707.....	29
<i>Kansas City Power & Light Co. v. McKay</i> , 96 App. D.C. 273, 225 F. 2d 924, certiorari denied, 350 U.S. 884.....	22, 27, 28
<i>Massachusetts v. Mellon</i> , 262 U.S. 447.....	26, 29, 30
<i>Mayo v. Canning Co.</i> , 309 U.S. 310.....	44
<i>McClelland v. Merchants & Miners Nat. Bank</i> , 77 Colo. 302, 236 Pac. 714.....	45
<i>McCullough v. Maryland</i> , 4 Wheat. 316.....	33, 44
<i>National Bank v. Commonwealth</i> , 9 Wall. 353.....	33
<i>Noble State Bank v. Hushell</i> , 219 U.S. 104.....	49
<i>Opinion of the Justices</i> , 151 A. 2d 236 (N.H.).....	47, 49
<i>Perkins v. Lukens Steel Co.</i> , 310 U.S. 113.....	26
<i>Scott v. Bank</i> , 15 Fed. 494 (C.C.S.D.N.Y.).....	46
<i>Sibley v. Bank</i> , 133 Mass. 515.....	46
<i>Singer & Sons v. Union Pacific RR.</i> , 311 U.S. 295.....	27
<i>State of Minnesota ex rel Miles Lord, Attorney General, v. Benson</i> , 107 U.S. App. D.C. 106, 274 F. 2d 764.....	23, 29, 30
<i>State of Texas v. Nat. Bank of Commerce</i> , 290 F. 2d 229 (C.A. 5), certiorari denied, 368 U.S. 832.....	54

VI

Cases—Continued

Page

<i>Tennessee Power Co. v. Tennessee Valley Authority</i> , 306 U.S. 118	27
<i>Union National Bank of Clarksburg v. Home Loan Bank Board</i> , 98 U.S. App. D.C. 204, 233 F. 2d 695.....	23, 25, 27, 28
<i>Wisconsin Bankers Association v. Robertson</i> , 190 F. Supp. 90 aff'd 111 U.S. App. D.C. 85, 294 F. 2d 714, certiorari denied, 308 U.S. 938.....	31

Constitution and Statutes:

Constitution, Art. VI, cl. 2.....	32
Banking Act of 1933 (Act of June 16, 1933, c. 89, (48 Stat. 189):	
Sec. 23, 12 U.S.C. 36.....	9, 13, 18, 19, 24, 41, 43, 51, 54, 55
Sec. 19, 12 U.S.C. 61.....	8, 23, 24, 34, 45, 46, 50
Sec. 30, 12 U.S.C. 77.....	5
Sec. 31, 12 U.S.C. 32.....	
12 U.S.C. 215(d).....	13
Sec. 2, 12 U.S.C. 221a.....	8, 24
Sec. 13, 12 U.S.C. 371(c).....	8, 43
Sec. 20, 12 U.S.C. 377.....	8

Bank Holding Company Act of 1956 (Pub. L 511, 84th Cong. 2d Sess., Act of May 9, 1956, c. 240, 70 Stat. 133):

Sec. 2, 12 U.S.C. 1841.....	2, 10, 18, 23, 24
Sec. 3, 12 U.S.C. 1842.....	10, 11, 16, 40, 43, 47
Sec. 4, 12 U.S.C. 1843.....	11
Sec. 5, 12 U.S.C. 1844.....	
Sec. 7, 12 U.S.C. 1846.....	2, 11, 19, 22, 35, 41, 48, 49
Sec. 8, 12 U.S.C. 1847.....	11
Sec. 9, 12 U.S.C. 1848.....	11

Home Owners Loan Act, 48 Stat. 133, 12 U.S.C. 1461, et seq.....

Louisiana Act 275 of 1962.....	19, 21, 22, 23, 31, 34, 35, 43, 44, 47, 49
--------------------------------	--

McFadden Act (Act of Feb. 25, 1927 40 Stat. 1043), 12 U.S.C. 36.....

National Bank Act (Act of February 25, 1863):

R.S. §324, as amended, 12 U.S.C. 1.....	4, 21
R.S. §325, as amended, 12 U.S.C. 2.....	4
R.S. §5133, 12 U.S.C. 21.....	3
R.S. §5134, 12 U.S.C. 22.....	3, 7
R.S. §5135, 12 U.S.C. 23.....	3
R.S. §5136, as amended, 12 U.S.C. 24.....	3, 23, 31, 34, 43, 45
R.S. §5168, 12 U.S.C. 26.....	4, 5, 18, 23, 24, 32, 34, 42, 43, 44, 45

VII

Constitution and Statutes—Continued

Page

R.S. §5169, 12 U.S.C. 27.....	2, 5, 18, 23, 24, 32, 34, 42, 43, 44, 45, 54
12 U.S.C. 38.....	3
R.S. §5139, as amended, 12 U.S.C. 52.....	4, 45, 46, 50
R.S. §5205, 12 U.S.C. 55.....	4
R.S. §5 46, as amended, 12 U.S.C. 72.....	4
R.S. §5190, as amended, 12 U.S.C. 81.....	4, 7
R.S. §5197, as amended, 12 U.S.C. 85.....	4, 43
R.S. §5153, as amended, 12 U.S.C. 90.....	4, 43
R.S. §5239, as amended, 12 U.S.C. 93.....	4, 5
R.S. §5211, 12 U.S.C. 161.....	8
R.S. §5220, as amended, 12 U.S.C. 181.....	4, 5
R.S. §5234, 12 U.S.C. 192.....	4, 5
R.S. §5240, as amended, 12 U.S.C. 481.....	5, 8
28 U.S.C. 1291	2

Miscellaneous:

Cartinhour, <i>Branch, Group and Chain Banking</i> (1931).....	6, 51
Chapman, <i>Concentration of Banking</i> (1934).....	6, 7
Chapman and Westerfield, <i>Branch Banking</i> (1942).....	3, 6, 7, 8
76 Cong. Rec. 1998.....	52
77 Cong. Rec. 5863.....	52
77 Cong. Rec. 5892.....	52
101 Cong. Rec. 8176.....	37
101 Cong. Rec. 8187.....	36, 53
102 Cong. Rec. 6750.....	10, 36, 37, 52
102 Cong. Rec. 6752-6753.....	3, 44, 47, 53
102 Cong. Rec. 6754.....	53
102 Cong. Rec. 6758.....	39
102 Cong. Rec. 6858.....	40
102 Cong. Rec. 6861.....	41
102 Cong. Rec. 6863.....	40
102 Cong. Rec. 6946.....	40
102 Cong. Rec. 7161.....	40
102 Cong. Rec. 7941.....	40
26 Fed. Reg. 6792	15
26 Fed. Rez. 1 2312.....	16
Fordham, <i>Branch Banks as Separate Entities</i> , 31 Col. L. Rev. 975 (1931).....	6
Hearings before the House Committee on Banking and Currency, 71st Cong., 2d Sess., on "Branch, Chain and Group Banking.".....	6, 51
H. Rept. 150, 73rd Cong. 1st Sess.....	52
H. Rept. No. 609, 84th Cong. 1st Sess.....	36, 37
H.R. 6227.....	36, 53
Lamb, <i>Group Banking</i> (1961).....	3, 10
Ostrolenk, <i>The Economics of Branch Banking</i> (1930).....	6

VIII

Miscellaneous—Continued	Page
S. 2577	37
Sen. Rept. 584, 72d Cong., 1st Sess.....	52
Sen. Rept. 1095, Part 1, 84th Cong., 1st Sess.....	10, 23, 24, 37, 38, 39, 47, 48, 53
Sen. Rept. 1095, Part 2, 84th Cong., 2d Sess.....	23, 39, 41, 48
2 Sutherland, <i>Statutory Construction</i> (Third Ed.)	
§5006, 5012.....	47
Willis, J. Brooke, "United States" in Beckhart, <i>Banking Systems</i> (1954).....	5
Willit, <i>Selected Articles on Chain, Group and Branch Banking</i> (1930).....	6, 7

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17672

WHITNEY NATIONAL BANK IN JEFFERSON PARISH,
APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY; GUARANTY
BANK AND TRUST COMPANY; BANK OF LOUISIANA IN
NEW ORLEANS; J. W. JEANSONNE, STATE BANK COM-
MISSIONER OF THE STATE OF LOUISIANA, APPELLEES

No. 17,681

JAMES J. SAXON, COMPTROLLER OF THE CURRENCY,
APPELLANT

v.

BANK OF NEW ORLEANS AND TRUST COMPANY; GUARANTY
BANK AND TRUST COMPANY; BANK OF LOUISIANA IN
NEW ORLEANS; J. W. JEANSONNE, STATE BANK COM-
MISSIONER OF THE STATE OF LOUISIANA, APPELLEES

On Appeals from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANT, COMPTROLLER OF THE
CURRENCY

JURISDICTIONAL STATEMENT

Appellees are three state chartered banks and the State
Bank Commissioner of Louisiana. In this action against

the appellant Comptroller of the Currency they seek a declaratory judgment and injunction prohibiting him from issuing a Certificate of Authority under the National Bank Act (12 U.S.C. 27) to appellant Whitney National Bank in Jefferson Parish,¹ which intervened as a party defendant. The district court entered a permanent injunction as prayed, from which Whitney-Jefferson and the Comptroller took these appeals. The jurisdiction of this Court rests upon 28 U.S.C. 1291.

STATEMENT OF THE CASE

The district court has enjoined the Comptroller of the Currency from issuing a Certificate of Authority under the National Bank Act (12 U.S.C. 27), to a national bank (Whitney National Bank in Jefferson Parish) to engage in the business of banking. The Board of Governors of the Federal Reserve Board had previously granted the Whitney Holding Corporation permission under the terms of the Bank Holding Company Act, (12 U.S.C. 1841, *et seq.*) to acquire the stock of Whitney-Jefferson. The district court's decision was based upon a statute of Louisiana, which prohibited the opening of banks owned by holding companies and which the district court believed to be applicable to national banks by virtue of a provision of the Bank Holding Company Act (12 U.S.C. 1846).

These appeals challenge the district court's interpretation of the Bank Holding Company Act and of the relationship among that Act, the National Bank Act, and State law. Before stating the basic facts giving rise to this action, therefore, we set forth below undisputed background material concerning the statutory framework for the regulation of national banks, bank holding companies, and state banks.

¹ Sometimes referred to hereafter as "Whitney-Jefferson".

A. Background

1. *The National Bank Act.* Although the Federal Government had chartered the first Bank of the United States (1791-1811) and the Second Bank of the United States (1816-1836) to provide for a Federal depository and a sound national currency,² from 1836 to 1863 the banking system of the United States was composed of private (unincorporated) banks and banks operating under corporate charters granted by the States.³ With the advent of the Civil War, however, the inadequacy of the banking systems existing under State law became apparent. The nation needed a uniform system of commercial banking, a sound bank note currency, and a market for government bonds. To meet these needs, Congress in 1863 passed the National Bank Act.⁴ Act of February 25, 1863, 12 U.S.C. 38. Although the National Bank Act was recast in 1864 (*Ibid.*) and has been amended on numerous occasions,⁵ the basic characteristics of the Act remained unaltered insofar as they affect this case, and may be briefly described.

The Act provides the method for forming national banks (12 U.S.C. 21). Upon the making of articles of association and an organization certificate, and their filing with the Comptroller of the Currency, the association becomes a body corporate with power to make contracts, sue or be sued, elect directors, etc., and "to exercise * * * all such incidental powers as shall be necessary to carry on the business of banking." 12 U.S.C. 22, 23, 24. Before the national bank is authorized to commence the business of banking, however, the Comptroller of the Currency must investigate the bank to determine whether it "has complied with all the requirements" of the

² Lamb, *Group Banking*, pp. 13-18 (1961).

³ *Id.* at p. 17.

⁴ Chapman and Westerfield, *Branch Banking* (1942), pp. 58-59.

⁵ From 1863 to 1913, more than sixty amendments to the Act were adopted by Congress. Lamb, *op. cit.*, p. 25.

Act "required to entitle it to engage in the business of banking." 12 U.S.C. 26. The Act requires certain minimum amounts of paid in capital, and requires the directors to meet citizenship, residence and stock ownership qualifications. 12 U.S.C. 52, 72. See generally, 12 U.S.C. 51-67, and 71-78. Shareholders may be held individually responsible for the debts of the bank in the amount of the par value of the stock. 12 U.S.C. 55.

The Act also provides a comprehensive system for the regulation of national banks, fixing the place(s) at which business may be conducted, requiring the national banks to maintain a stated reserve of funds, limiting the indebtedness which may be incurred by the banks, the liability of any person to the bank, the rate of interest they may charge, and prohibiting various kinds of activities. 12 U.S.C. 81-88, 91-93. The Act also imposes upon the national banks duties of acting as depositaries of public money and financial agents of the Government (12 U.S.C. 90), and sets forth a comprehensive plan by which currency is obtained and circulated. 12 U.S.C. 101-138. In addition to regulating the conduct of the business of banking by national banks, the Act makes bank stock freely transferable, sets forth the method by which it is to be transferred, the terms and methods by which the banks are to be dissolved or placed into receivership, and the manner in which the assets are to be divided among creditors. 12 U.S.C. 52, 181-200.

The administration of the National Bank Act, and therefore the regulation of the national banks, is committed to the Comptroller of the Currency, who performs his duties under the general directions of the Secretary of the Treasury. 12 U.S.C. 1, 2. The Comptroller has numerous duties in regard to national banks, including the examination of the banks and their reports, the removal of directors, the bringing of suits to forfeit the charters of banks which have violated the Act, the

supervision of banks being dissolved, the appointment of receivers for banks in default, as well as the approval of new banks and the issuance of Certificates of Authority to permit them to commence the business of banking. 12 U.S.C. 26, 27, 77, 93, 161, 181, 192, 481. The Comptroller is, in sum, the administrative officer charged with the administration of the National Bank Act and the supervision of national banks.⁶

The National Bank Act thus provides a comprehensive statutory scheme for the formation and chartering of national banks, their entry into the business of banking, their regulation while so engaged, and the termination of their activities. As the Supreme Court early recognized, the Act constitutes "a complete system for the establishment and government of national banks * * * Everything essential to the formation of the banks, the issue, security, and redemption of their notes, the winding up of the institutions and the distribution of their effects, are fully provided for * * *." *Cook County Nat. Bank v. United States*, 107 U.S. 445, 448.

Since the Act did not prohibit the operation of banks chartered by the States, it in effect authorized a dual banking system consisting of the national banks, chartered and regulated by the Federal Government, and the banks chartered by the states which are subject to state regulation. The two systems of banks have existed from 1863 to the present time. The Federal Reserve Act, adopted in 1913, and the Federal Deposit Insurance Corporation Act, adopted in 1933, permitted state chartered banks to join the Federal systems and gave Federal officials regulatory authority over the state banks which chose to become members. The distinction between the Federally chartered and regulated national banks, and the state chartered and regulated banks has otherwise maintained its vitality to this time.⁷

⁶ *Cooper v. O'Connor*, 69 App. D.C. 100, 99 F. 2d 135, 139.

⁷ See J. Brooke Willis, "United States" in Beckhart, *Banking Systems* (1954), pp. 846-847.

2. *Unit, Branch, Chain and Group Banking, and the Banking Act of 1933.* Although branch banking had played an important role in American banking prior to the Civil War, that War and the National Bank Act itself encouraged the growth of independent (unit) banks, which became the predominant and virtually the only form of banking in the United States in the second half of the Nineteenth Century.⁸ During the last few years of that Century and the first thirty years of the Twentieth, however, multiple unit banking of several kinds grew rapidly in size and importance. By the early 1930's branch, chain, and group banking had become an important part of the banking system in the United States. The distinctions between the three kinds of multiple unit banking, and particularly the differences between branch banking on the one hand, and chain and group banking on the other, had become settled among persons knowledgeable in the field⁹ and in the literature.¹⁰

Branch banking was recognized as a system in which the branches are merely offices of the parent institution, and constitute but a single corporation, with a common capital, management and board of directors. Chain (or "affiliate") and group (bank holding company) banks, on the other hand, were recognized as having separate corporate entities, each with its separate capital, organization, name, offices and directors, but owned or controlled by the same persons or by the same corporation.¹¹ The

⁸ Chapman and Westerfield, *Branch Banking* (1942), pp. 23-49, 58-65.

⁹ Hearings before the House Committee on Banking and Currency, 71st Cong., 2d Sess., on "Branch, Chain and Group Banking."

¹⁰ E.g., Cartinhour, *Branch, Group and Chain Banking* (1931), pp. 54-60; Chapman, *Concentration of Banking* (1934), pp. 322-364; Fordham, *Branch Banks as Separate Entities*, 31 Col. L. Rev. 975, 976 (1931); Ostrolenk, *The Economics of Branch Banking* (1930); Willit, *Selected Articles on Chain, Group and Branch Banking* (1930), pp. 54-59.

¹¹ Cartinhour, *op. cit.*, p. 59.

banks were said to be in a chain when the ownership or control was in the hands of a person or persons, and in a group when the ownership or control was in the hands of a corporate holding company.¹²

The National Bank Act, as recast in 1864, provided for the doing of business only at the "place" and "office" specified in the articles of the association.¹³ Consequently, the Comptroller of the Currency and other Federal authorities consistently interpreted the Act (at least until 1922) as not authorizing a national bank to do business in more than one office, and therefore as prohibiting branch banking for national banks.¹⁴ The Supreme Court approved the administrative interpretation of the Act, and held that it did not authorize national banks to engage in branch banking.¹⁵

With the rapid growth of branch banking in state chartered banks during the first twenty years of this century, national banks were frequently unable to compete with the state banks. Federal authorities, including the Comptroller, and organizations of national bankers therefore advocated an amendment to the Act authorizing the establishment of branches of national banks. After a legislative struggle lasting several years, Congress adopted the McFadden Act in 1927,¹⁶ which authorized national banks to establish branches in the city of the parent bank, if state law permitted state banks to operate branches.¹⁷

The McFadden Act satisfied neither the proponents nor the opponents of branch banking, and it left chain and group banking wholly unregulated. The host of bank

¹² *Ibid.*

¹³ R.S. §§ 5134, 5190.

¹⁴ Chapman, *Concentration of Banking*, pp. 110-111.

¹⁵ *First National Bank of St. Louis v. Missouri*, 263 U.S. 640.

¹⁶ Willit, *Chain, Group and Branch Banking*, p. 10; Chapman and Westerfield, *Branch Banking*, pp. 84-107.

¹⁷ 40 Stat. 1043.

failures from 1920-1933 and particularly from 1930-1933 showed clearly the need for bank reform.¹⁸

In 1933, Congress, under the leadership of Senator Glass of Virginia, adopted a comprehensive bank reform statute known as the Glass-Steagell Act or the Banking Act of 1933. Act of June 16, 1933, c. 89, 48 Stat. 189. Among the twenty-five relatively distinct topics covered by the Act were the subjects of branch, chain and group banking.¹⁹

The Act contains a broad definition of the term "affiliate" to include both banks owned or controlled by bank holding companies and those owned or controlled by individuals who control other banks. Sec. 2, 12 U.S.C. 221a (b) and (c). The Act prohibited affiliation by a member bank of the Federal Reserve System with any organization dealing in securities, controlled loans to or from affiliates, required reports of banks which were affiliates of national banks, and authorized the examination of affiliates of national banks. Secs. 20, 13, 27, and 28, 12 U.S.C. 377, 371(c), 161, 481. Since each of the provisions applied to affiliates, they applied alike to chain and group banks.

One provision of the Act applied to group banks only. In order to obtain the privilege of voting stock it owned in national banks, a bank holding company was required to agree (1) to own readily marketable assets other than bank stock, in an amount equal to 25% of the aggregate par value of its bank stock, (2) to be examined by federal authorities, and (3) to divest itself of ownership of securities companies. Sec. 19, 12 U.S.C. 61. The Board of Governors of the Federal Reserve Board was authorized to grant or withhold the permit to vote the national bank stock "as the public interest may require", considering such factors as the financial condition of the holding company and the general character of its management. *Ibid.* Holding companies which owned or controlled State member banks were required to agree to the same conditions and limitations. Sec. 5(c), 12 U.S.C. 337.

¹⁸ Chapman and Westerfield, *op. cit.*, pp. 108-115.

¹⁹ *Id.*, at 116.

In regard to branch banking, the Banking Act of 1933 authorized the formation of branches of national banks only in the geographical area within which the establishment of branches was affirmatively authorized to State banks by the express terms of State law. Sec. 7, 12 U.S.C. 36(c). To establish or move a branch, a national bank must obtain the consent and approval of the Comptroller. 12 U.S.C. 36(e).

In general, then, the Banking Act of 1933 accepted the settled distinctions between chain and group banking on the one hand, and branch banking on the other. Although it regulated bank holding companies which held the stock of national banks or stock of State banks which were members of the Federal Reserve System, and the affiliates of such banks, it did not seek to prohibit the expansion of group banking or chain banking. In regard to branch banking, on the other hand, the Act broadened the prior authority of national banks to open branches, but limited the opening of branches of national banks to circumstances in which State law affirmatively granted such authority to State banks.

3. *The Bank Holding Company Act of 1956.* Since the Banking Act of 1933 made no effort to prevent the expansion of group and chain banking, and since it applied primarily to national banks, its provisions were deemed inadequate by some bankers and the Federal officials concerned. Beginning in the early 1950's, the Board of Governors of the Federal Reserve System recommended legislation to meet two major problems in bank holding company operations. The first was the unrestricted ability of holding companies to expand their operations. The Board was particularly concerned with the problem of monopoly, that is, that the commercial banking facilities in an area might be concentrated under the control of a single holding company. The second problem involved by bank holding companies of enterprises unrelated to banking, despite the fact that the desirability of prohibiting banks from engaging in non-banking business had long been recog-

nized. The Board advocated legislation which was the minimum necessary to meet these two problems, and the Comptroller of the Currency made similar recommendations.²⁰

The Bank Holding Company Act of 1956 (Act of May 9, 1956, c. 240, 70 Stat. 133) which embodied the results of nearly two decades of public discussion and study,²¹ followed generally the suggestions of the Board and the Comptroller.²² Its two principal provisions were designed to meet the two problems outlined by the Chairman of the Federal Reserve Board.²³ A bank holding company was defined to include any company which owns or controls 25% or more of the stock of any two or more banks, or which controls the election of a majority of the board of directors of 2 or more banks. 12 U.S.C. 1841(a). The problem of unrestricted expansion of the bank holding companies was met by Sec. 3 of the Act, which prohibits a bank holding company from acquiring ownership or control, of, voting shares of any bank (national or state) without prior approval of the Board. 12 U.S.C. 1842(a). If the Board's approval is sought to acquire control of a national bank, the views of the Comptroller are to be obtained, while if it is a State bank, the views to be obtained are those of the State supervisory authority. 12 U.S.C. 1842(b). In determining whether to approve any acquisition by a bank holding company, the Board is directed to consider the financial history and condition of the company and banks concerned, their prospects, the character of their management, the convenience and needs of the area concerned, and whether the proposed action would expand the size of the bank holding company beyond that consistent with the public interest and the preserva-

²⁰ Lamb, *Group Banking* (1961), pp. 177-183.

²¹ *Id.* at 194.

²² 102 Cong. Rec. 6750.

²³ Sen. Rept. 1095, Part 1, 84th Cong., 1st Sess., p. 2.

tion of competition. 12 U.S.C. 1842(c). The Board is directed, however, to deny any application for the acquisition of voting shares of any bank located outside the State in which the holding company has its principal place of business, unless State law specifically authorizes such acquisitions. 12 U.S.C. 1842(d).

The second problem outlined by the Board was met by Section 4, which with certain exceptions requires the divestiture of non-banking assets by bank holding companies within two years of the enactment, and prohibits the acquisition of such assets. 12 U.S.C. 1843.

In addition to the principal provisions outlined above, the Act preserves to the States their preexisting authority and jurisdiction with respect to banks, bank holding companies, and subsidiaries thereof (12 U.S.C. 1846), and provides for penalties for certain activities (12 U.S.C. 1847) and judicial review of Board actions (12 U.S.C. 1848).

The Bank Holding Company Act of 1956 is, therefore, a comprehensive statute designed to regulate bank holding companies and their subsidiaries, whether national or state banks. It is administered by the Federal Reserve Board, with provision for the expression of views by the Comptroller in regard to national banks, and the appropriate State official in regard to State banks. Except for permitting State law to prohibit the acquisition of banks across State lines (12 U.S.C. 1843(d)), it preserved existing State jurisdiction, but did not confer new authority upon the States.²⁴ 12 U.S.C. 1846.

B. The Undisputed Facts

1. *The Problem and the Plan.* The Whitney National Bank of New Orleans²⁵ is a national banking association organized and operating under the National Bank Act (12 U.S.C. 21, *et seq.*). It has its main office and branches

²⁴ See *infra*, pp. 35-41.

²⁵ We shall refer to it as "Whitney-New Orleans." See J.A. 99.

in the City of New Orleans (which is coextensive with the Parish of Orleans),²⁶ and is the largest bank in Louisiana (J.A. 99). The stock of Whitney-New Orleans is widely held, by more than 1400 stockholders, none of whom owned more than 10% (J.A. 43).

Jefferson Parish adjoins the City of New Orleans, and is divided by the Mississippi River. The part of Jefferson Parish located on the same bank of the River as New Orleans (East Jefferson Parish) has grown rapidly in recent years with the expansion of the New Orleans metropolitan area beyond the city limits (J.A. 100-101). Because of its location upstream from the city, its industrial development has been rapid, and it contains desirable residential areas (J.A. 64). Indeed, from 1950 to 1960, while the population of the City of New Orleans increased by only 10%, the population of East Jefferson Parish increased more than 128%, which was the largest growth in the metropolitan area (J.A. 70, 101). The prospects for continued growth were excellent, and the need for further banking services evident (J.A. 70, 101).

In 1955 Whitney-New Orleans' largest competitor, the National Bank of Commerce in New Orleans, opened an affiliate in East Jefferson Parish, called the National Bank of Commerce in Jefferson Parish, controlled by the same stockholders as the New Orleans bank, and with an interlocking set of directors and executive officers. (J.A. 65, 116). By 1962, the Bank of Commerce affiliate had established five offices in East Jefferson Parish (J.A. 70). At least one other New Orleans competitor was operating in Jefferson Parish, by means of a bank which was owned and controlled by persons who owned or controlled the New Orleans bank (J.A. 42, 90, 116). Recognizing the fact that the metropolitan New Orleans area was one economic unit, therefore, affiliates of the New Orleans banks which were Whitney-New Orleans' largest competitors had moved into Jefferson Parish in the form of chain banks.

²⁶ A parish in Louisiana is comparable to a county in other states.

Since this development which began in 1955, the management of Whitney-New Orleans began to consider alternative methods of entering Jefferson Parish. Although Louisiana law permits a bank to establish branches within its parish (county), it prohibits the establishment of branches in another parish. Louisiana R.S. 6:54. Since the Banking Act of 1933 prohibits the opening of branches of national banks where State law prohibits the opening of branches to State banks (12 U.S.C. 36), Whitney-New Orleans had the choice only between opening an affiliate, as its competitors had done, or setting up a bank holding company with a subsidiary in Jefferson Parish. In order to avoid the possible conflicts of interest that might arise with an affiliate, the Whitney management determined in 1960, after discussions with a Deputy Comptroller of the Currency, to adopt the holding company approach (J.A. 65, 70-72).

Whitney-New Orleans thereupon adopted a program which was to have the effect of establishing a holding company (Whitney Holding Corp.), placing the ownership of the bank into the hands of the holding company, and the ownership of the holding company in the hands of the owners of the bank; and then to establish a subsidiary national bank in Jefferson Parish. The program involved several steps.

First, a Whitney Holding Corp. was to be incorporated under the laws of Louisiana. Whitney-New Orleans was to pay in \$350,000 of undivided profits in return for 5,600 of the 1,120,000 shares of Whitney Holding Corp. stock (J.A. 112).

Secondly, a new national bank, the Crescent City National Bank was to be organized under the National Bank Act, with Whitney Holding Corp. paying in \$350,000, in return for the 112,000 shares of Crescent City. Whitney-New Orleans would then consolidate with Crescent City, thus giving any dissenting stockholders of Whitney the statutory right under 12 U.S.C. (Supp. III) 215(d), to

have their shares appraised by disinterested appraisers, and to receive the appraised value in cash (J.A. 44, 112-113).

Thirdly, under the terms of the consolidation agreement, the stockholders would surrender their shares of Whitney-New Orleans in return for proportionate shares of the Whitney Holding Corp. The original shareholders of Whitney-New Orleans thus would become owners of Whitney Holding Corp., which would in turn own all of the stock of the merged Whitney New Orleans/Crescent City Bank, which would take the name of Whitney-New Orleans (J.A. 43-44, 113-114).

Fourth, Whitney-New Orleans would declare a dividend of \$650,000 from undivided profits, which it would pay to its owner, Whitney Holding Corp. With this sum, Whitney Holding Corp. would purchase the shares of the newly formed Whitney National Bank in Jefferson Parish, with the exception of qualifying shares for directors (J.A. 114).

The net result of the program would be to form a holding company owned by the former shareholders of Whitney-New Orleans, which would in turn own both that bank, and a new bank in Jefferson Parish. In order to put this program into effect, Whitney-New Orleans had to obtain not only the approval of its shareholders, but also the approval of the Comptroller of the Currency for the chartering of the new national banks under the National Bank Act, and the approval of the Board of Governors of the Federal Reserve System for Whitney Holding Corp. to acquire the ownership of the two banks and thus become a bank holding company under the Bank Holding Company Act of 1956 (J.A. 43-44, 114).

2. Approval of the Plan by the Comptroller, the Shareholders and the Board. By three applications filed on June 28, 1961, Whitney submitted its entire program to the Comptroller of the Currency. The applications sought his approval to form the Crescent City National Bank, to consolidate Whitney-New Orleans into Crescent

City under the name of Whitney-New Orleans, with the stockholders to receive stock of Whitney Holding, and to form the Whitney National Bank in Jefferson Parish. In accordance with usual practice, the Comptroller's examiners carried out a full field investigation of the applications over a period of several months. As was customary, the investigators contacted competitor banks and obtained their views on the applications. After completion of the investigation, the Comptroller, by letter of October 3, 1961, gave his preliminary approval for the formation of Crescent City and Whitney-Jefferson, subject to the approval of the Federal Reserve Board for the formation of Whitney Holding Corp. and for its acquisition of the stock of Whitney-New Orleans and Whitney-Jefferson (J.A. 44). His approval was based upon the character of the management, the proposed capital structure, the prospects of the new bank, and the other factors prescribed by the National Bank Act (J.A. 46-47).

By letter of October 27, 1961, the management of Whitney-New Orleans laid a detailed outline of its entire program before its shareholders. The letter noted that, upon appropriate notice and publication, the consolidation agreement (between Crescent City and Whitney-New Orleans) would be submitted for approval of the shareholders, and that it would become effective only upon the affirmative vote of 2/3ds or more of the outstanding shares (J.A. 112-115). On November 29, 1961, the shareholders met, and approved the proposed consolidation by a vote of 93,645 shares to 12,145 shares (J.A. 46, 66). None of the shareholders exercised their rights to receive the assessed value of their shares in cash (J.A. 44).

Meanwhile, on July 14, 1961, Whitney Holding Corp. filed an application with the Board of Governors of the Federal Reserve System to become a registered bank holding company under the Bank Holding Company Act of 1956. Notice of the receipt of this application was published in the Federal Register on July 28, 1961, affording interested persons an opportunity to submit their views. 26 Fed. Reg. 6792; J.A. 58. After his approval

of Whitney's program on October 3, 1961, the Comptroller, by letter of October 11, 1961, advised the Board of his views under Sec. 3(b) of the Bank Holding Company Act (12 U.S.C. 1842(b)) in favor of Whitney Holding Corp.'s proposed acquisition of the stock of Whitney-Jefferson and his opinion that the proposed acquisition was in accord with the public interest and each of the statutory criteria under that Act (J.A. 44-45, 166-167); see 12 U.S.C. 1842 (c) *infra*, p. 61.

The Board then determined that it would be in the public interest to afford further opportunity for the expression of views of interested persons. It therefore ordered that a public proceeding be held at its offices in Washington, D. C., on January 17, 1962. Notice of this proceeding was published in the Federal Register on December 22, 1961, with a provision that any one desiring to appear should submit a written request, setting forth the nature of the views he wished to express. 26 Fed. Reg. 12312; J.A. 58.

Pursuant to that notice, the Board held its hearing on January 17, 1962, with its Chairman, William McChesney Martin, presiding (J.A. 61). Mr. Berry, President of Whitney Holding Corp., testified in detail as to the objectives and purposes of his program, and was subjected to searching questions by members of the Board (J.A. 62-75). Mr. Louis J. Roussel, a minority stockholder in Whitney-New Orleans, and a controlling stockholder in one of its chief competitors which has an affiliate in Jefferson Parish (J.A. 89-90), testified at length against the proposal, with an additional presentation by his counsel (J.A. 75-90). Similarly, although he had filed no request to appear (J.A. 62-63), the President of the affiliate in Jefferson Parish of Whitney-New Orleans' chief competitor, was permitted to testify in opposition to the application (J.A. 90-92). None of the appellees appeared to testify in opposition to the application, and none of them made their opposition known to the Board.

By order and opinion dated May 3, 1962, the Board approved Whitney Holding Corp.'s application by a vote

of 6 to 1 (J.A. 97-98, 99-111). The Board made a thorough and careful analysis of the statutory factors, and found that the establishment of Whitney-Jefferson would be to the convenience and benefit of Jefferson Parish and that it would lead to vigorous, beneficial banking competition in the entire New Orleans metropolitan area (J.A. 105). It noted specially that Whitney's largest competitor had already established an affiliate with several offices in East Jefferson Parish, and that the establishment of Whitney-Jefferson would in some respects be a matter of economic self defense (J.A. 104, 106). The Board indicated its belief that the "natural and legitimate desire" of a metropolitan bank to furnish its services to customers located in a suburb which, although beyond the city limits, "is realistically an integral part of the metropolitan economy", should not "be frustrated unless it involves effects significantly detrimental to the public interest" (J.A. 104). It found no such results here, and therefore concluded that the proposed acquisitions would be consistent with the statutory objectives and the public interest, and granted the application (J.A. 97-98, 104-106). One of the members of the Board, Governor Mitchell, concurred in a separate opinion (J.A. 107-108), while another, Governor Robertson, dissented primarily on the ground that approval might lead to an undue concentration of banking power in the hands of a holding company which controlled the largest bank in the metropolitan area (J.A. 109-111).

The Board's order of May 3, 1962, approving the acquisitions, provided that they not be consummated sooner than seven days after the date of the order, or later than three months thereafter (J.A. 98). No petition for rehearing or reconsideration was filed within those seven days.

3. *Consummation of the Plan.* On May 18, 1962, the Comptroller issued his approval for the consolidation of Whitney-New Orleans with Crescent City. The consolidation was effected on May 24, and the consolidated bank opened for business on May 25. The Articles of Asso-

ciation and Certificate of Organization under the National Bank Act of Whitney-Jefferson had previously been executed, and filed with the Comptroller, the Whitney Holding Corp. had purchased the shares of Whitney-Jefferson (except for directors' qualifying shares) for approximately \$650,000, and by-laws for Whitney-Jefferson had been adopted, and its directors and officers elected (J.A. 390). Since the Comptroller had already found the bank entitled to commence the business of banking (12 U.S.C. 26) all that remained to be done was to issue a Certificate of Authority under the National Bank Act (12 U.S.C. 27). (J.A. 46, 115-116).

4. *The Institution of Court Proceedings.* On June 3, 1962, appellees brought this action to restrain the Comptroller from issuing a Certificate of Authority to Whitney-Jefferson, and for a declaratory judgment that he is prohibited from doing so by the National Bank Act (12 U.S.C. 27 and 36) and the Bank Holding Company Act (12 U.S.C. 1841, et seq.) (J.A. 6-20). The original plaintiffs were three banks, chartered by the State, which asserted that they were potential competitors of Whitney-Jefferson (J.A. 6). The Bank of New Orleans and Trust Company conducts a banking business in New Orleans, and described itself as "a relatively small competitor" of Whitney-New Orleans, and asserted that the establishment of Whitney-Jefferson might cause it to lose a substantial part of the business it enjoys from Jefferson Parish customers (J.A. 16-17). The second plaintiff voluntarily dismissed its complaint (J.A. 2, 210). The third plaintiff, Guaranty Bank and Trust Co. of Lafayette, Louisiana, which conducts its business in Lafayette Parish, asserted no immediate particular injury from the opening of Whitney-Jefferson, but asserted that the opening of Whitney-Jefferson is a part of a plan by Whitney to conduct its business in several parishes, including possibly Lafayette Parish (J.A. 18-19). The third appellee is another competitor bank doing business in New Orleans, which intervened as a plaintiff on July 5, 1962. Whitney-Jefferson intervened as a defendant on July 10, 1962 (J.A. 2).

The gravamen of the complaint was that Whitney-Jefferson was a branch bank within the meaning and scope of 12 U.S.C. 36, and its formation was therefore prohibited by law. On the bases of this complaint, plaintiff-appellees obtained (1) a voluntary stay by the Comptroller of his proposed issuance of the Certificate of Authority; (2) when that expired, a Temporary Restraining Order; and, as we see below (p. 20) (3) a preliminary injunction.

Meanwhile, on June 13, 1962, two of the plaintiffs, the Bank of New Orleans and Trust Co., and the Guaranty Bank and Trust Co., filed a petition in the United States Court of Appeals for the Fifth Circuit, seeking review under 18 U.S.C. 1846, of the Federal Reserve Board's action in approving the acquisition of ownership of Whitney-Jefferson by Whitney Holding Corp. (J.A. 288), although neither of them had appeared before the Board or otherwise made their objections known to the Board until their unsuccessful attempt, long after issuance of the Board's order, to obtain reconsideration by the Board. That proceeding in the Court of Appeals for the Fifth Circuit is now pending.²⁷

5. *The Adoption of Louisiana Act 275 of 1962.* A few days before the complaint in the present case was filed (J.A. 263), a bill was introduced in the Louisiana legislature which would make it unlawful for any bank holding company to acquire more than 25% of the stock of any bank doing business in the State of Louisiana. As amended on June 27, the bill made it unlawful for any bank owned or controlled by a bank holding company to open for business, after its effective date, whether or not it had received its charter or certificate to engage in the banking business. The bill quickly passed both houses of the legislature, and was signed by the Governor on July 10, 1962, as "emergency legislation" to become effective immediately. Louisiana Act 275 of 1962, J.A. 297-300.

²⁷ No. 19738. It has been set for oral argument during the week of June 3, 1963.

6. *The Preliminary Injunction, and the Final Decision.* Plaintiff's motion for a preliminary injunction came on for hearing on July 6, 1962, after the new Louisiana statute had been introduced as a bill, but before its final enactment (J.A. 263-264). Although counsel for Whitney-Jefferson pointed out that the impending Louisiana legislation might render unlawful acts which were lawful at the time suit was commenced, so that the granting of the preliminary injunction would destroy the *status quo* rather than preserve it, the district court (per Holtzoff, J.) granted the preliminary injunction on the ground that it did not wish to engage in a race with the legislature of Louisiana (J.A. 264, 372).

On September 5, 1962, after defendants' motions for summary judgment had already been filed, the State Bank Commissioners of Louisiana moved to intervene as a party plaintiff (J.A. 3, 346-347). He purported to represent all banks in Louisiana under his jurisdiction (J.A. 348), including banks located in Jefferson Parish (J.A. 350). Appellants agreed not to oppose his motion, upon appellees' agreement that all existing motions were to apply alike to the new party (J.A. 4, 384-385). The parties also agreed that the pleadings would be treated as amended to permit consideration of the new Louisiana statute (*Ibid.*).

The case was then presented to the district court on cross motions for summary judgment (J.A. 436). Although plaintiffs-appellees had attempted to assert material issues of fact sufficient to block appellant-defendants' motions, counsel for plaintiffs-appellees conceded on oral argument that there were no genuine issues of fact (J.A. 431-434), and counsel for appellants agreed that there were none (*Ibid.*).

The district court (per McLaughlin, J.) granted plaintiffs' motion for summary judgment and denied defendants' (J.A. 437). In a short memorandum opinion the court ruled that the Bank Holding Company Act of 1956 reserved to or conferred upon the States authority to pass legislation regulating holding company activities or pro-

hibiting the operation within its borders of banks owned by holding companies, including national banks, and that the Louisiana Act 275 of 1962 deprived the Comptroller of the Currency of his authority under the National Bank Act to issue a Certificate of Authority to the Whitney National Bank in Jefferson Parish (J.A. 437-438, 449, 451). The court did not specifically rule upon plaintiffs' original theory that Whitney-Jefferson was merely a branch of Whitney-New Orleans (J.A. 438). By granting the injunction against the issuance of the Certificate of Authority to Whitney-Jefferson only so long as the operation of Whitney-Jefferson would be in violation of Louisiana Act 275 of 1962, however, the court appears to have rejected the ground upon which this suit was originally brought (J.A. 451). From the final order granting a permanent injunction enjoining the Comptroller from issuing the Certificate of Authority to Whitney-Jefferson, these appeals are taken (J.A. 452, 453).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The pertinent provisions of the Constitution and the statutes involved are set forth in the Appendix, *infra*, pp. 56-63.

STATEMENT OF POINTS

1. The district court erred in entering a permanent injunction in favor of appellees, because appellees have no standing to challenge the authority of appellant to charter a duly organized national bank.

2. The district court erred in ruling that a State statute, Louisiana Act 275 of 1962, deprived appellant of his authority under the National Bank Act to issue a Certificate of Authority to a duly organized national bank, because the National Bank Act (12 U.S.C. 1, *et seq.*) creates a complete and exclusive system of Federal law for chartering and regulating national banks, and does

not incorporate or refer to State law, except in regard to branch banking.

3. The district court erred in ruling that a State law, Louisiana Act 275 of 1962, deprived appellant of his authority under the National Bank Act to issue a Certificate of Authority to a duly organized national bank, because Louisiana Act 275 of 1962 does not purport to limit his authority, and would be in conflict with the National Bank Act if it did attempt to diminish his authority.

4. The district court erred in ruling that Sec. 7 of the Bank Holding Company Act authorized the States to enact legislation which would prohibit the appellant from issuing a Certificate of Authority to a duly organized national bank, because that section merely preserved existing State jurisdiction.

5. The Whitney National Bank in Jefferson Parish is not a branch bank within the meaning of the National Bank Act, and the district court decision cannot be upheld on the ground that it is a branch bank.

6. The district court erred in denying appellant's motion for summary judgment and in granting appellees' motion for summary judgment and in enjoining appellant from issuing a Certificate of Authority to the Whitney National Bank in Jefferson Parish pursuant to the National Bank Act.

SUMMARY OF ARGUMENT

I

Appellees have no standing to maintain this suit. The sole basis for the complaints of appellee state banks is their possible loss of business from the opening of a new, competing, national bank. Since they can point to no invasion of a legal right, any economic disadvantage they may suffer as the result of competition from the new bank is *damnum absque injuria*, and they have no standing. *Kansas City Light & Power Co. v. McKay*, 96 U.S. App. D.C. 273, 225 F. 2d 924, certiorari denied, 350 U.S.

884; *Union National Bank v. Home Loan Bank Board*, 98 U.S. App. D.C. 204, 233 F. 2d 695. Similarly the fourth appellee can point to no invasion of any personal legal right, and he has no standing to sue on behalf of the banks under his jurisdiction, because neither the State, nor any of its officials, has the authority to represent its residents as *parens patriae* in their relations with the Federal government. *State of Minnesota v. Benson*, 107 U.S. App. D.C. 106, 274 F. 2d 764.

II

The district court erred in ruling that Sec. 3(5) of the Louisiana Act 275 of 1962 prohibited the opening of a duly organized national bank. That provision of State law cannot validly apply to national banks, because such application would be in conflict with Federal law.

A. National banks are instrumentalities of the Federal government, organized and created under Federal law, and discharging vital Federal duties. Any State law which would prohibit a duly formed national bank owned or controlled by a bank holding company "to open for business" would totally prevent the national bank from discharging the duties for which it was created under Federal law. It would also be in direct conflict with the provisions of Federal law, 12 U.S.C. 24, 26, 27, 61. It cannot, therefore, validly apply to national banks. *Franklin Nat. Bank v. New York*, 347 U.S. 373.

B. The district court erred in ruling that the Bank Holding Company Act of 1956 (18 U.S.C. 1841, *et seq.*) preserved to or conferred upon the States any authority to prohibit the opening of duly formed national banks. In adopting that Act Congress expressly rejected contentions that the regulation of control of national banks by bank holding companies should be left to the States, and determined that such regulation should remain "with the appropriate Federal authorities." Sen. Rept. 1095, Part 1, 84th Cong., 1st Sess., pp. 10-11; Sen. Rept. 1095, Part 2, 84th Cong., 2d Sess., p. 5.

Similarly, the National Bank Act constitutes a comprehensive system of Federal law for the establishment of national banks. *Deitrick v. Greaney*, 309 U.S. 190, 194. Only the criteria of Federal law are to be considered in determining whether or not a national bank is entitled to commence the business of banking. 12 U.S.C. 26, 27. The prohibitions of State law therefore have no application to the authority of the Comptroller to permit a national bank to open for business, and the States have no more authority to prevent the opening of a national bank, duly formed under Federal law, than they have to require a national bank to close.

III

The district court's order cannot be sustained on the ground that Whitney-Jefferson is simply a branch of Whitney-New Orleans. In both the Banking Act of 1933 and the Bank Holding Company Act of 1956, Congress accepted the substantial distinctions between branch banks, and affiliates of bank holding companies, and deliberately chose to regulate them differently. 12 U.S.C. 36(c) and (f), 12 U.S.C. 61 and 221a, and 12 U.S.C. 1841, *et seq.* Sen. Rept. 1095, Part 1, 84th Cong., 1st Sess., p. 11. The courts have properly refused to grant that which Congress specifically determined not to grant. *Camden Trust Co. v. Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, petition for rehearing denied, *Id.*, certiorari denied, 369 U.S. 886; *First Nat. Bank of Billings v. First Bank Stock Corp.*, 306 F. 2d 937 (C.A. 9).

ARGUMENT

I

Since the Only Possible Injury to Appellees from the Issuance of a Certificate of Authority Would be a Prospective Increase in Competition, Appellees Have No Standing to Challenge the Administrative Determination to Issue the Certificate

This Court has reserved the question of whether banks, which are potential competitors of a new national bank or savings and loan office, have standing to challenge the issuance of a charter to the new bank. *Camden Trust Co. v. Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, 525, certiorari denied, 369 U.S. 886. See also, *First National Bank v. First Federal Savings and Loan Ass'n.*, 96 U.S. App. D.C. 194, 225 F. 2d 33, 36. Similarly, in affirming the issuance of a preliminary injunction in *Gidney v. Commercial State Bank of Roseville*, 108 U.S. App. D.C. 37, 278 F. 2d 871, in its *per curiam* opinion this Court merely stated that it agreed "in general" with the views expressed by the district court (174 F. Supp. 770). Although the district court had stated that potential competitors have standing to challenge the approval of a branch office of a bank (174 F. Supp. at 780), this Court's agreement "in general" with the views of the district court and its affirmance of the preliminary injunction merely indicated that this Court believed that the interests of the competing banks was sufficient to justify the issuance of an injunction pending a final determination.

Although we recognize that this Court need not decide the issue in the present case in order to reverse the district court judgment and sustain the administrative decision (*Camden Trust Co. v. Gidney, supra*), the issue of the plaintiffs' standing is properly before the Court and there is ample authority for resolving it. *Union National Bank of Clarksburg v. Home Loan Bank Board*, 98 U.S. App. D.C. 204, 233 F. 2d 695, 697; *Federal Home Loan Bank*

Board v. Rowe, 109 U.S. App. D.C. 140, 284 F. 2d 274, 277-279. Therefore, we turn now to the threshold issue as to appellees' standing, and urge the Court to reverse the district court judgment on the ground that potential competitors' banks have no standing to challenge the issuance of a charter to a new national bank.

1. Three of appellees are state banks who anticipate adverse economic consequences from the opening of a new national bank in East Jefferson Parish. As we show below (*infra*, pp. 29-30), the fourth appellee stands in no better position than the other three. Their complaints are grounded upon loss of business and profits which might result if the new national bank begins to engage in the business of banking (J.A. 6, 16-19, 170-172). The Comptroller has not undertaken to regulate them, and they have not been ordered to forego any of their activities, and have not been subjected to any obligation or duty. As their counsel conceded in argument before the district court, their sole objective is to eliminate the potential competition which they fear from the new national bank (J.A. 233). But appellees can point to no legal or actionable wrong to them arising from the opening of a new national bank. For that reason the decisions of the Supreme Court and this Court require, we submit, a dismissal of this suit for appellees' lack of standing.

It has, of course, long been settled that a person has no standing to invoke the jurisdiction of the federal courts in the absence of an invasion or threat to a legal right which is personal to him, as distinguished from the general interest of the public in the enforcement of the law. *Alabama Power Co. v. Ickes*, 302 U.S. 464, 470, 479-483, and cases cited; *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 125; *Massachusetts v. Mellon*, 262 U.S. 447, 486-489. Where those engaged in a business have no contractual or property right to be free of competitors, the potential competitors, of course, have no standing to challenge an administrative action which simply increases the amount or effectiveness of competition. *Alabama*

Power Co. v. Ickes, *supra*; *Tennessee Power Co. v. Tennessee Valley Authority*, 306 U.S. 118, 137-144. Any economic disadvantage to them as the result of the Government's action in increasing competition is *damnum absque injuria*, that is, not the kind of damage which permits an action at law or in equity. *Ibid*; *Singer & Sons v. Union Pacific RR*, 311 U.S. 295.

The decisions of this Court are, of course, in accord with the governing principles and decisions of the Supreme Court set forth above. *E.g.*, *Benson v. Schofield*, 98 App. D.C. 424, 236 F. 2d 719, 722, certiorari denied, 352 U.S. 976; *Kansas City Power & Light Co. v. McKay*, 95 App. D.C. 273, 225 F. 2d 924, certiorari denied, 350 U.S. 884. In the *Kansas City Light & Power Co.* case, the plaintiffs were private electricity companies which in effect sought to avoid competition from federal instrumentalities, by enjoining their acquisition of certain generation and transmission facilities (225 F. 2d at 926-927). Since they could show no personal interest or injury in the proposed Governmental action apart from a possible increase in competition, this Court held that they could suffer no legal wrong from the proposed action and they therefore did not have standing to challenge its lawfulness.²⁹ 225 F. 2d at 928-929. Any economic disadvantage from the increase in competition would be *damnum absque injuria*. *Ibid*.

Even more closely in point is *Union National Bank of Clarksburg v. Home Loan Bank Board*, 98 U.S. App. D.C. 204, 233 F. 2d 695, 697, in which this Court held that a bank has no standing to challenge the chartering of

²⁹ In *Kansas City Light & Power Co. v. McKay*, *supra*, this Court also ruled that Sec. 10 of the Administrative Procedure Act, 5 U.S.C. 1009, does not confer standing to sue on those who would not otherwise have such standing. 225 F. 2d at 931-934. Other courts have subsequently adopted that view. *Gustavsson Contracting Co. v. Floete*, 278 F. 2d 912, 914 (C.A. 2), certiorari denied, 364 U.S. 894; *Duba v. Schuetzle*, 303 F. 2d 570, 574-575 (C.A. 8). Apparently recognizing the force of these decisions, neither appellees nor the district court have suggested that they have standing by virtue of the Administrative Procedure Act.

a potential competitor by a Federal agency. Accord: *Federal Home Loan Bank Board v. Rowe*, 109 U.S. App. D.C. 140, 284 F. 2d 274, 277-279. In *Union National Bank of Clarksburg, supra*, this Court ruled that national and state banks have no standing to challenge the issuance by the Federal Home Loan Bank Board of a charter to a proposed building and loan institution. The Court found nothing in the statute, which authorizes the issuance of such charters to such institutions,³⁰ manifesting an intent by Congress to confer legal rights to banks which might be in competition with such institutions. And the Court ruled, on the authority of *Kansas City Light & Power Co. v. McKay, supra*, that such competitor banks have no standing to challenge the legality of the issuance of the charter.

The reasoning and holding of *Union National Bank of Clarksburg, supra*, are applicable here. The National Bank Act, like the Home Owners Loan Act, manifests no Congressional intent to confer standing or any legal rights upon banks which might suffer from the competition of a newly-chartered national bank. Here, as in that case, the competing bank can point to no invasion of their legal or equitable rights, as distinguished from the general public's interest in the administration of the law. Here, as there, the Federal agency imposed no obligation or duty upon them, and took away no privilege of theirs. The only purpose of this suit, as that one, is to avoid the possible lessening of business and profits which might result from the presence of a new competing lending institution in the area. But possible economic disadvantage from competition is not, absent a special Congressional grant of standing, enough to permit the disadvantaged party to invoke the jurisdiction of the courts. This Court's language in *Union National Bank of Clarksburg v. Home Loan Bank Board* (233 F. 2d at 697) is, therefore, wholly appropriate here:

³⁰ The Home Owners Loan Act, 48 Stat. 133, 12 U.S.C. 1461, *et seq.*

Since Congress has shown no intention to protect appellants [here appellees] "from competition by a Federal instrumentality * * * they have no basis for asserting that the competition * * * is illegal as to them."

2. The fourth appellee, the State Bank Commissioner of Louisiana, is in a slightly different position than the other appellees. He intervened as a party to this action a short time before the district court heard the cross motions for summary judgment (J.A. 3, 4).³¹ His action was brought on his own behalf, and "for the benefit of all banks" in Louisiana subject to his jurisdiction (J.A. 348). We do not understand either the appellees or the district court to suggest that he has any standing to invoke the jurisdiction of the Federal court which other appellees do not possess.

Any such suggestion would, at any rate be incorrect, for he would not have standing even if the other appellees did. It is well settled that the States and their officials do not have standing to challenge the proposed actions of Federal officials as *parens patriae* on behalf of their citizens. *Massachusetts v. Mellon*, 262 U.S. 447, 485-486; *Florida v. Mellon*, 273 U.S. 12, 16-17; *State of Minnesota ex rel Miles Lord, Attorney General v. Benson*, 107 U.S. App.D.C. 106, 274 F. 2d 764; see also, *Jones ex rel Louisiana v. Bowles*, 322 U.S. 707. The State has standing to challenge such action only when it affects the State in some proprietary capacity. See, *Georgia v. Pennsylvania RR.*, 324 U.S. 439, 446.

The only substantive issue involved here is whether a Federal official, the Comptroller of the Currency, has authority under the National Bank Act to issue a Certificate of Authority to a national bank, to permit it to engage in the business of banking. Neither the State Bank Commissioner, nor the State itself, has any personal or proprietary rights involved in this litigation. Therefore, neither the State Bank Commissioner nor the

³¹ His intervention was pursuant to stipulation by the parties.

State has any power or duty to challenge the legality of the Comptroller's authority in that regard. See *Massachusetts v. Mellon*, *supra*, 262 U.S. at 485. The present case is, therefore, very similar to the recent decision in *State of Minnesota ex rel Miles Lord, Attorney General v. Benson*, 107 U.S. App. D.C. 106, 274 F. 2d 764. There, this Court held that despite a Minnesota statute conferring standing on the State Attorney General to represent the dairy industry of the State, he had no standing on behalf of the dairy industry of his State to challenge the legality of Federal administrative action in a Federal court. 274 F. 2d at 766. Similarly, whatever authority the State Bank Commissioner may have under the laws of Louisiana, he has no standing to invoke the jurisdiction of a Federal court to challenge the lawfulness of a proposed administrative act by a Federal official, on behalf of the State chartered banks in Louisiana.

3. In ruling that appellees did have standing, the district court relied upon *Gidney v. Wayne-Oakland Bank*, 252 F. 2d 537 (C.A. 6), certiorari denied, 358 U.S. 830. In that case the Sixth Circuit ruled that a State bank which had been granted permission to open a branch in the City of Troy, Michigan, had standing to challenge the Comptroller of the Currency's grant of approval to a national bank to establish a branch in the same city. 252 F. 2d at 544. It so held in one paragraph, without the citation of any statutory or judicial authority.

We believe *Wayne-Oakland Bank* was wrongly decided and is in conflict, in principle at least, with the decisions of the Supreme Court and this Court discussed above (*supra* pp. 25-29). Moreover, it is distinguishable from the case at bar. In the first place, the interests of the appellees here are much more remote than those of the Wayne-Oakland Bank. None of the appellees here own or operate a bank or a branch bank in Jefferson Parish. Two of them are banks doing business in Orleans Parish (the City of New Orleans), while one does business 5 parishes away (J.A. 6, 16-19, 47, 170-172). The Wayne-Oakland Bank branch in the City of Troy was, by contrast, not

only in the same county as its competitor, but in the very same city. It was, moreover, the only bank in that city. The damage from competition to that bank was much more direct and immediate than any possible damage here. More important, perhaps, was the provision of Michigan law which the Court deemed applicable which, in effect, gave the first bank in a city or village a semi-exclusive franchise by prohibiting the opening of branches of other banks in that municipality.³² There is, of course, no such protection against competition under the law applicable here.³³

II

The District Court Erred in Ruling That the Louisiana Act 275 of 1962 Deprived the Comptroller of the Currency of His Authority under the National Bank Act to Issue a Certificate Permitting a Duly Organized National Bank to Open for Business

At the time this suit was commenced, the Federal Reserve Board had approved the acquisition of ownership of Whitney-Jefferson by the Whitney Holding Company. Whitney-Jefferson had become a duly organized national bank, having all the powers conferred upon such federal instrumentalities by the National Bank Act (12 U.S.C. 24). Since it had complied with all the requirements of

³² The Michigan statute provided that no branch of a bank "shall be established in a city or village in which a state or national bank or branch thereof is then in operation." 252 F. 2d at 539. Since the Court apparently believed that the Michigan law was intended for the benefit of the banks doing business in the city or village, it is not surprising that it ruled that the establishment of a branch there was an invasion of the local bank's legally protected rights. 252 F. 2d at 539, 544.

³³ The district court also relied upon two of its earlier decisions, *Commercial State Bank v. Gidney*, 174 F. Supp. 770, 778, aff'd 108 U.S. App. D.C. 37, 278 F. 2d 871 (discussed above, *supra*, p. 25), and *Wisconsin Bankers Ass'n v. Robertson*, 190 F. Supp. 90, 94 (holding that banks had standing to challenge the legality of certain regulations governing savings and loan institutions), aff'd 111 U.S. App. D.C. 85, 294 F. 2d 714, certiorari denied 308 U.S. 938.

that Act necessary to entitle it to engage in the business of banking, the Comptroller had approved it as being entitled to commence the business of banking (12 U.S.C. 26) and was ready to issue a Certificate of Authority under 12 U.S.C. 27, which would permit it to do so.

Although finding no unlawfulness in the issuance of such a Certificate at the time when the Comptroller was ready to issue it (when this suit was instituted), the district court ruled that a subsequently-adopted State statute made such issuance unlawful (J.A. 435-438). We show here that that ruling was erroneous. State laws cannot prohibit the opening of a national bank. And neither the National Bank Act nor the Bank Holding Company Act confers jurisdiction upon the States to prevent a national bank from opening for business, or to prohibit the issuance of a Certificate of Authority permitting a national bank to commence the business of banking.

A. Unless Authorized to Do So By Congress a State Has No Authority To Prevent The Issuance of a Certificate of Authority to a National Bank, Or to Prohibit a National Bank From Opening For Business

There can be no dispute that national banks "are instrumentalities of the Federal Government" (*First National Bank v. California*, 262 U.S. 366, 368), created by federal law (the National Bank Act), and serving vital federal purposes (*Franklin National Bank v. New York*, 347 U.S. 373, 375). It is equally unquestioned that the Supremacy Clause of the Constitution³⁴ precludes interference by the states, "whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the

³⁴ U.S. Const., Art. VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

general government." *Easton v. Iowa*, 188 U.S. 220, 229, 238; see *McCulloch v. Maryland*, 4 Wheat. 316. As the Supreme Court said in *First National Bank v. California*, *supra* (262 U.S. at 369):

* * * any attempt by a State to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created.

The principles set forth have become "axiomatic" and have been "sanctioned by the repeated adjudications" of the Court (*Davis v. Elmira Savings Bank*, 161 U.S. 275, 283).³⁵

The provision of the Louisiana Act 275 of 1962, relied upon by the district court, makes it unlawful for any bank which is a subsidiary of a bank holding company "to open for business." (J.A. 435; App. A, *infra*, p. 63). If applied to national banks, it would prevent them from performing any of the functions for which they were created. It would be difficult to think of a more direct interference with national banks (*Easton v. Iowa*, 188 U.S. 220, 229), or a greater impairment of the ability of these federal instrumentalities to discharge their federal

³⁵ Some of the numerous decisions holding State law invalid as to national banks are *Farmers and Mechanics Nat. Bank v. Dearing*, 91 U.S. 29, 33-34 (forfeiture for making loan above lawful rate of interest); *Davis v. Elmira Savings Bank*, 161 U.S. 275, 283 (priorities on distribution of assets); *Easton v. Iowa*, 188 U.S. 220, 229-231 (acceptance of deposits when insolvent); *Jennings v. U.S. Fidelity & Guaranty Co.*, 294 U.S. 216, 225-226 (priorities on distribution of assets); *Franklin National Bank v. New York*, 347 U.S. 373 (prohibition on advertising for savings accounts). Of course, state laws relating to such matters as contracts, the acquisition of property, the right to collect debts, succession to property and other matters concerning the daily course of business are properly applicable to national banks. *E.g.*, *National Bank v. Commonwealth*, 9 Wall. 353, 362; *Anderson National Bank v. Lockett*, 321 U.S. 233), unless they infringe upon the national banking laws or impose an undue burden upon the ability of the national banks to discharge their Federal functions (*Anderson National Bank v. Lockett*, *supra*, 321 U.S. at 248).

duties (*First National Bank v. California*, 262 U.S. 366, 369) than a statute which prohibits them from opening for business.

The Supreme Court has held that State laws are invalid as applied to national banks where the interference and impairment were much less than those here. See cases collected at fn. 35, *supra*, p. 33. For example, in *Franklin National Bank v. New York*, 347 U.S. 373, the Court held that a New York statute which prohibited all banks (except mutual savings banks) from using the word "saving" or "savings" in their advertising was invalid under the Supremacy Clause as applied to national banks, because the authority of those banks under Federal law to receive deposits on savings accounts necessarily implied authority to advertise for such deposits. The State statute here goes much farther than the New York statute, because it not only tends to impair the national bank's ability to attract a specific type of deposits, but wholly prevents it from receiving deposits of any kind, or otherwise engaging in the business of banking and performing the Federal functions for which it was created under Federal law.

Sec. 3(5) of the Louisiana Act 275 of 1962 is in conflict with the express terms of the National Bank Act, which give national banks "all such incidental powers as shall be necessary to carry on the business of banking" (R.S. § 5136, as amended, 12 U.S.C. 24), and give the Comptroller of the Currency, rather than the States, the authority to determine which national banks are "entitled to commence the business of banking" (R.S. §§ 5168, 5169, 12 U.S.C. 26, 27). See *Casey v. Galli*, 94 U.S. 673, 678.

Sec. 3(5) of the Louisiana Act 275 of 1962 is also in conflict with Sec. 19 of the Banking Act of 1933, 12 U.S.C. 61. That provision commits to the Board of Governors of the Federal Reserve Board the authority to determine, in accordance with the public interest and the other criteria set forth therein, the circumstances under which a bank holding company may exercise control over a na-

tional bank, by voting the stock which it owns. It therefore provides a system of Federal regulation of bank holding companies which have acquired ownership or control of national banks, in accordance with Federal law. The State law in question conflicts with that provision by effectively prohibiting bank holding companies from exercising such control, although the exercise of such control is found to be in accordance with the public interest under the criteria set forth in Federal law.

Unless some act of Congress confers authority upon the States to do what Louisiana has done here, therefore, Sec. 3(5) of the Louisiana Act 275 of 1962 is invalid as applied to national banks, not only because it prevents national banks from fulfilling the functions and duties for which they were chartered under Federal law, but also because it is in direct conflict with the express terms of the National Bank Act, and with the Banking Act of 1933. We show below that Congress has not conferred such authority upon the States.

B. Neither the Bank Holding Company Act nor the National Bank Act Authorizes the States to Prohibit the Opening of National Banks or Deprives the Comptroller of the Currency of the Authority to Permit a National Bank to Commence the Business of Banking

Apparently aware of the conflict between the National Bank Act and any State statute that purports to prohibit the opening for business of a national bank, the district court ruled that Sec. 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846) "reserved" to the States the power, or "authorized" the States to do so (J.A. 437-438, 451). We show here that that Act did not reserve or grant any new authority to the States in regard to the regulation of national banks. We then show that the National Bank Act directs the Comptroller to permit the opening of national banks in accordance with the criteria of Federal law only, so that prior to the passage of the Bank Holding Company Act, the States did not have any

authority to prohibit the opening of a national bank regardless of its ownership.

1. *The Bank Holding Company Act of 1956 does not Authorize a State to Prohibit the Opening of a National Bank within its Borders, Regardless of its Ownership.* The question of the authority of the States to regulate or forbid group banking within its borders was the focus of substantial Congressional consideration in the enactment of the Bank Holding Company Act of 1956. Although Congress in effect granted new authority to the States to prohibit the expansion of bank holding company operations across State lines, it deliberately refused to grant any new authority to the States to regulate or prohibit the operation of national banks within their borders. Both the legislative history of the Act and its clear language reflect the deliberate Congressional decision not to confer additional authority upon the States in regard to national banks.

a. In 1955 the House of Representatives passed a bill (H.R. 6227) designed to regulate bank holding company activities, and prohibit their expansion except in the most limited circumstances. As the House report shows, the major premise of the bill was that bank holding companies are harmful *per se*. H. Rept. No. 609, 84th Cong., 1st Sess., pp. 2-6; 102 Cong. Rec. 6750.

One of the major provisions of the bill was to prohibit the acquisition or establishment of subsidiary banks by bank holding companies, unless State law authorized such acquisition. Section 5 of the bill directed the Federal Reserve Board to deny any application by a bank holding company to acquire control or ownership of a bank (whether State or national), unless it was within the geographical area within which branches of State banks were permitted by State law, or unless the State specifically authorized such acquisition. 101 Cong. Rec. 8187. Similarly, the bill flatly prohibited further expansion by a bank holding company outside its home

state. *Ibid.* As the House report noted (H. Rept. 609, 84th Cong., 1st Sess., p. 15) :

Section 5 further provides that in no case could further expansion outside of the home State of a bank holding company or a subsidiary thereof be approved and applications within the home State could be approved only within the area within which branches of banks are permitted or where by State statute such expansion is specifically exempted from branch banking restrictions.

* * *

* * * The statutes of the States contain provisions clearly calculated to control the extent of banking operations by geographic limitations. It has been a generally recognized principle that such control could best be exercised by the individual State, depending on the banking needs of such State. * * *

An amendment to the bill, which among other things, deleted these grants of authority to the States, had been defeated in the House, by a margin of 41 votes. 101 Cong. Rec. 8176.

The Senate took a different approach to the question of the regulation of bank holding companies. In contrast to the House bill, which operated on the premise that bank holding companies were harmful *per se*, the Senate Committee on Banking and Currency under its chairman, Senator Robertson of Virginia, adopted the philosophy of the Federal banking authorities, which was that bank holding companies are legitimate businesses which frequently provide benefits to the public, and should be subject only to enough regulation to prevent unfair competition and undue concentration of banking activities. 102 Cong. Rec. 6750. The Committee adopted this approach by recommending passage of Senator Robertson's bill (S. 2577). Sen. Rept. 1095, 84th Cong., 1st Sess., Part 1. Also in contrast to the House bill, was the approach Senator Robertson's bill took as to the proper agency to control bank holding company acquisitions. His bill specifically rejected the view that acquisitions across State lines should be absolutely prohibited, and that the

State should have the authority to prohibit acquisitions of both national and State chartered banks within its borders. On the contrary, Senator Robertson's bill left the question of acquisitions across State lines to a case by case determination, and limited the State's control over acquisitions within State borders to acquisitions of State chartered banks. Specifically, it sought to preserve the dual banking system by reserving to Federal authorities control over acquisitions of national banks. As the Senate report stated (Sen. Rept. 1095, 84th Cong., 1st Sess., pp. 10-11):

In view of the adequate opportunity for expression of opinion on an application accorded to the Comptroller of the Currency and the State bank supervisory authorities in appropriate cases by the bill, the committee deems it unnecessary and inadvisable to insert in the bill any arbitrary prohibition against the expansion of bank holding companies across State lines. Let any application for such expansion be decided on its merits in accordance with the procedure outlined in this bill.

* * * *

The same reasoning led the committee to believe that the bill should contain no provision leaving solely to State control determination of the question as to whether a bank holding company can acquire an interest in a national bank. *If our dual banking system is to operate as a truly dual system, the Federal authorities ought not to surrender their supervisory authority over national banks to State decision.* This is not to say the Federal authorities ought not to consider carefully the views of State authorities regarding the management and control of national banks, *but the ultimate determination of public interest in the national bank system should rest with the appropriate Federal authorities.* [Emphasis added].

The original Robertson bill preserved States' rights in this area, by allowing the States to be more restrictive in regard to the operation of bank holding companies within their borders than the Federal authorities or law would be. Consistent with its views about preserving the

dual banking system, however, the bill made it clear that such power was reserved to the State only "within the limits of its proper jurisdictional authority" (Sen. Rept. No. 1095, *supra*, at p. 11), that is, in regard to State chartered banks.

The Robertson bill did not reach the floor of the Senate during the first session of the 84th Congress. Over the summer recess, the committee had an opportunity for further study of the bill and for clarifying and technical amendments. When Congress reconvened, the committee issued a supplementary report, which became part 2 of its original report. Sen. Rept. No. 1095, Part 2, 84th Cong., 2d Sess., p. 1. Among the provisions causing concern was Section 7 of the bill, which "preserved" to the States the authority to be more restrictive in regard to bank holding subsidiaries within their control than the Federal authorities. The concern was that this section actually conferred new authority upon the States. In order to make it clear that the bill was intended to confer no new authority upon the States, Sec. 7 was rewritten to provide simply that the bill should not be construed as preventing any State from exercising such powers as it had at the time of enactment, or that it may thereafter acquire. And, as if to emphasize its view that the States were not to have control over the operations of national banks, the committee reiterated in the second part of its report, that the reservation of rights to the States was to be read in light of the dual (*i.e.*, national and State) banking system, and that it did "not grant any new authority to States over national banks." Sen. Rept. 1095, Part 2, *supra*, p. 5; 102 Cong. Rec. 6758. As the committee phrased it (*Ibid.*):

In order to clarify the legislative history of section 7, the committee wishes to emphasize that this section does not grant any new authority to States over national banks. The purpose of the section is to preserve to the States those powers which they now have in our dual banking system. It is always of uppermost importance in legislation of this nature to pre-

serve the dual system of National and State banks, and section 7 must be viewed in that light.

On the floor of the Senate the Robertson bill was amended in one respect which is relevant here. Senator Douglas introduced an amendment which had the effect of forbidding acquisitions by bank holding companies across State lines, unless State law authorized such acquisitions. 102 Cong. Rec. 6858. The Douglas amendment was adopted (102 Cong. Rec. 6863), and became Section 3(d) of the bill, which directed the Federal Reserve Board to deny any applications for the acquisition of ownership or control of voting shares of a bank by an out of State bank holding company, unless State law expressly authorized such acquisitions. 12 U.S.C. 1842(d). The amended bill in effect allowed State law to prohibit acquisitions by out of State holding companies, and to that extent conferred new authority upon the States. In all other respects, however, the bill merely preserved existing State authority and clearly did not confer any new authority upon the States to regulate or control national banks.

The Robertson bill, with the Douglas amendment, passed the Senate. 102 Cong. Rec. 6946. The House concurred in the Senate amendments, thereby adopting Senator Robertson's bill (102 Cong. Rec. 7161), which, with the President's signature, became the Bank Holding Company Act of 1956. 102 Cong. Rec. 7941; Pub. L. 511, 84th Cong., 2d Sess., 70 Stat. 138.

b. The language of the Act clearly reflects the Congressional decision not to confer any additional authority upon the States to regulate or control national banks, with the sole exception of acquisitions by bank holding companies across state lines. Where, in Sec. 3(d), Congress intended to make the acquisitions dependent upon State law, it directed the Federal Reserve Board in unmistakable language to deny all applications by a bank holding company to acquire ownership or control of an out of State bank, unless the statute of that State authorized such acquisition. 12 U.S.C. 1842(d), App. A, *infra*, pp. 62. Congress adopted this provision knowing full well

that it gave the States a limited authority to affect national banks by preventing the ownership of national banks from passing to out of State holding companies, and so ran counter to the general policy of the National Bank Act which is to give the Federal authorities exclusive control and jurisdiction over national banks.³⁶ 102 Cong. Rec. 6861. By contrast, Sec. 7 states in equally clear terms that the States are to retain only their existing jurisdiction in regard to banks, bank holding companies, and their subsidiaries. 12 U.S.C. 1846. And that provision was accompanied by express legislative history to the effect that it was not intended to confer any new authority upon States over national banks. Sen. Rept. No. 1095, Part 2, 84th Cong., 2d Sess., p. 5. It is therefore clear that the Bank Holding Company Act conferred new authority upon States only to prohibit acquisitions by bank holding companies across State lines, but conferred no new or additional power upon the States to regulate, control or prohibit the operation of national banks within their borders.

2. *Since the National Bank Act Directs the Comptroller to Charter National Banks and Authorize Them to Commence the Business of Banking in Accordance with the Criteria of Federal Law Only, the States Have No Authority to Prohibit the Opening of National Banks.* The district court erred in relying on the Louisiana statute for the additional reason that the National Bank Act provides a complete, exclusively Federal, system for the formation and chartering of national banks and licensing them to do business. *Deitrick v. Greaney*, 309 U.S. 190, 194.

The language of the Act makes it clear that the Comptroller is directed to look only to the provisions of Federal law to determine whether a national bank is lawfully entitled to commence the business of banking, and is there-

³⁶ The primary exception to that general policy is contained in the Banking Act of 1933 (12 U.S.C. 36) which permits national banks to establish branches only to the geographical extent permitted by State law. 102 Cong. Rec. 6861; see also, *supra*, pp. 7, 9.

fore entitled to a certificate to that effect. Before he is to issue such a certificate, R.S. § 5168 (12 U.S.C. 26) directs the Comptroller, after receiving notice from the bank that it "has complied with all the provisions of this Title required to be complied with before an association shall be entitled to commence the business of banking",³⁷ to examine the condition of the bank, especially the amount of capital and the name, address and good faith stock ownership of the directors, and generally whether the bank "has complied with all the provisions of this Title required to entitle it to engage in the business of banking." If, after such an examination, the Comptroller finds "that such association is lawfully entitled to commence the business of banking", R.S. § 5169 (12 U.S.C. 27) directs him to issue a certificate. Thus, the only criteria for determining a national Bank's right to commence business are "the provisions of this Title", that is, the provisions of the National Bank Act. Further, as if to remove any possibility of doubt, Section 5169 (12 U.S.C. 27) provides that the Comptroller may withhold a certificate "whenever he has reason to suppose" that the bank was formed "for any other than the legitimate objects contemplated by this Title." In short, the bank's right to commence business, and the legitimacy of its objectives, are to be measured solely by the criteria prescribed by federal law. State law is to play no role in the establishment of national banks, or in their right to engage in business.

That State law has no role in the formation of national banks or their right to commence the business of banking is clear not only from the language of the National Bank Act, but also from its purpose, and the decisions of the Supreme Court. As we noted above (*supra*, p. 3) the National Bank Act was passed during the Civil War to meet a national need for a sound, uniform national banking system. For that reason, the require-

³⁷ The "Title" refers to Title LXII of the Revised Statutes, entitled "National Banks." In Title 12, United States Code, the word has been changed to "chapter", referring to Ch. 2, National Banks.

ments for the formation of the banks and their commencing the business of banking were to be federal, as was to be their regulation. As the Supreme Court has said, "The National Bank Act constitutes by itself a complete system for the establishment and government of National Banks." *Deitrick v. Greaney*, 309 U.S. 190, 194; *Cook County Nat. Bank v. United States*, 107 U.S. 445, 449.

In those few instances where Congress has chosen to refer to State law in the National Bank Act, or other banking statutes, it has done so in clear and unmistakable language.³⁸ The fact that it did not do so in regard to the national banks' entitlement to commence the business of banking is therefore highly persuasive of its intention that State law not govern. *Franklin National Bank v. New York*, *supra*, 347 U.S. at 378. It would be entirely improper, therefore, to impute to Congress an intent to make the opening of national banks subject to the local restrictions of State law, whether based upon ownership or other considerations.

3. *The District Court Erred in Holding That Sec. 3(5) of the Louisiana Act 275 of 1962 Deprived the Comptroller of His Authority to Permit Whitney-Jefferson to Commence the Business of Banking.* Since neither the National Bank Act nor the Bank Holding Company Act requires or authorizes the Comptroller to base the issuance of a Certificate of Authority upon the restrictions of State law, the Louisiana Act 275 of 1962 can have no bearing or application here. If, as the district court apparently believed, the Louisiana statute was intended to restrict or deprive the Comptroller of his authority to permit the opening of a national bank, it is in conflict with the National Bank Act (R.S. §§ 5168, 5169, 12 U.S.C. 26, 27). And if, as appellees may argue, it was intended to make

³⁸ *E.g.*, 12 U.S.C. 24 (eighth) (contributions to charities); 12 U.S.C. 36 (c) (establishment of branch banks); 12 U.S.C. 90 (security for the deposit of State funds); 12 U.S.C. 85 and 371 (interest rates). See also, 12 U.S.C. 1842(d) (acquisitions of banks by out of state holding companies).

unlawful the opening of a national bank for business, it is also in express conflict with the National Bank Act (R.S. § 5136, as amended, and § 5169, 12 U.S.C. 24, 27), because, as we have shown above, the State has no more authority to prevent the opening of a national bank, than it would to require it to be closed. In each case the State law would be in conflict with Federal law, and would effectively destroy national banks and prevent them from performing the Federal duties for which they were created. In each case, therefore, the State law would, under the Supremacy Clause, have to give way to Federal law. *Franklin National Bank v. New York*, 347 U.S. 373; *McCulloch v. Maryland*, 4 Wheat. 316. See, *supra*, pp. 32-35. We show here that the contentions which have been or may be urged to support the application of Sec. 3 (5) of the Louisiana Act 275 of 1962 to national banks³⁹ cannot be sustained.

a. It may be urged that the prohibition contained in Louisiana Act 275 of 1962 against the opening of a bank in Louisiana owned by a bank holding company is merely the equivalent of requiring holding companies to divest themselves of ownership of national banks within the State, and that the State has authority to require such divestiture. Any such contention must fail, because both its premise and its conclusion are unsound.

A State prohibition against opening a national bank is a more severe and direct interference with the ability of a national bank to perform the Federal functions for which it was created than any requirement concerning the ownership of the shares of a national bank. For a prohibition against opening a duly organized national

³⁹ Since this Louisiana statute, unlike the statute upon which it was apparently modeled (the Georgia Bank Holding Company Act, 102 Cong. Rec. 6752-3), does not specifically apply to national banks, long-established standards of adjudication should have led the district court, we submit, to read it narrowly, as applying only to state chartered banks, so as to avoid any conflict with Federal law. Cf. *Alma Motor Co. v. Timken Co.*, 329 U.S. 129, 136-137. This rule has particular force in passing on requests for injunctive relief. *Mayo v. Canning Co.*, 309 U.S. 310.

bank owned by a bank holding company, like a requirement that such a bank be closed, would automatically prevent the bank from performing its functions. A requirement of divestiture only, however, might enable the national bank to commence or continue in business until the sale of the stock, thus permitting it to perform the Federal functions for which it was created. Moreover, any State prohibition against opening a national bank is in clear and express conflict with R.S. § 5136, as amended, and §§ 5168 and 5169 (12 U.S.C. 24, 26, 27) of the National Bank Act, and with Sec. 19 of the Banking Act of 1933 (12 U.S.C. 61) while the conflict between a requirement of divestiture and Federal law. (R.S. § 5139, as amended, 12 U.S.C. 52 and 12 U.S.C. 61) is less obvious. Regardless of whether a State has authority to require divestiture of a national bank stock, therefore, it is clear that it cannot prohibit the opening of a national bank.

At any rate the conclusion that a State may require bank holding companies to divest themselves of shares of national banks within its borders would appear to be incorrect. Such a requirement would run head on into a fundamental policy of the National Bank Act, that is, the policy to encourage the free transferability of national bank stock, so as to increase its value and thereby encourage investment in these Federal instrumentalities. Congress embodied that policy in the National Bank Act (R.S. 5139, as amended, 12 U.S.C. 52) and the Supreme Court early recognized and honored that policy. *First Nat. Bank v. Lanier*, 11 Wall. (78 U.S.) 369, 377-378; *Earle v. Carson*, 188 U.S. 42, 46-47; *Buffalo Third Nat. Bank v. Buffalo German Ins. Co.*, 193 U.S. 581, 589-593. In accordance with that policy, both the Federal and State courts have followed Federal law in regard to the transferability of national bank stock, notwithstanding contrary State law, and have ruled that States cannot limit the transferability of national bank stock. *Doty v. First Nat. Bank*, 3 N.D. 9, 53 N.W. 77; *McClelland v. Merchants & Miners Nat. Bank*, 77 Colo. 302, 236 Pac. 714,

715; *Continental Nat. Bank v. Eliot Nat. Bank*, 7 Fed. 369, 370-371 (C.C., D. Mass.). Accord: *Scott v. Bank*, 15 Fed. 494, 499 (C.C.S.D.N.Y.); *Sibley v. Bank*, 133 Mass. 515, 519-521. Any State law which substantially impairs the free transferability of the stock of national banks would therefore appear to be in conflict with this Congressional policy, as embodied in the National Bank Act (R.S. § 5139, as amended, 12 U.S.C. 52).

A State statute requiring divestiture of national bank stock and prohibitions against its acquisition by bank holding companies would sharply reduce the value of such stock by increasing the amount of such stock available for sale, and reducing the number of potential buyers. Such State legislation would substantially reduce the value of national bank stock, thus severely impairing the ability of national banks to attract capital and thereby to fulfill their Federal duties. In our view, the States may not so impair the ability of national banks to discharge the Federal duties placed upon them. *Franklin National Bank v. New York*, 347 U.S. 373.

Moreover, Congress in the Banking Act of 1933 directed that the regulation of bank holding companies' ownership of the stock of national banks should be vested in Federal authorities, the Board of Governors of the Federal Reserve System, under criteria set forth by Federal law. 12 U.S.C. 61. That Act gives the Board authority to grant permission to bank holding companies to vote the stock they own in national banks, as the Board believes "the public interest may require." *Ibid.* Any attempt by a State to forbid the exercise of such control by requiring divestiture, would therefore appear to be in conflict with the terms and policy of Federal law. 12 U.S.C. 61.

One additional consideration sharply militates against any contention that the States have authority to require divestiture of national bank stock. The Senate Committee which reported the Bank Holding Company Act was strongly of the view that Federal law did not and should not leave "solely to State control determination of the

question as to whether a bank holding company can acquire an interest in a national bank." Sen. Rept. 1095, Part 1, 84th Cong., 1st Sess., pp. 10-11. The committee believed that such determinations should remain "with the appropriate Federal authorities" (*Ibid.*) that is, with the Federal Reserve Board. (see *supra*, pp. 37-40, 34-35, 46) With the enactment of the bill, the views of the committee became those of Congress⁴⁰ (see *supra*, p. 40). Since Congress thus believed and intended that the States did not and should not have the authority to determine whether or not a bank holding company should acquire ownership or control of national banks,⁴¹ the courts should be reluctant to conclude that they do have such authority, and even more reluctant to conclude that they have authority to preclude the opening of a national bank.

b. The district court relied (J.A. 437) upon two State court opinions to support its view that the Louisiana Act 275 of 1962 could properly apply to prohibit the opening of a national bank owned or controlled by a bank holding company, *Braeburn Securities Corp. v. Smith*, 15 Ill. 2d 55, 153 N.E. 2d 806, appeal dismissed, 359 U.S. 311; and *Opinion of the Justices*, 151 A. 2d 236 (N.H.). That reliance was misplaced, because neither case involved a statute which prohibited the opening of a national bank or otherwise directly interfered with its ability to discharge the functions for which it was created.

In *Braeburn Securities Corp.*, *supra*, an Illinois corporation which was engaged in investing in securities,

⁴⁰ Except in regard to the Douglas amendment (12 U.S.C. 1842(d)), which is, of course, not applicable here.

⁴¹ The legislative history in this regard contains one inconsistency. Although the committee report contained a clear and unequivocal statement that States did not and should not have such control (*supra*, p. 38). Senator Robertson on the floor of the Senate stated that the States would have authority to pass legislation prohibiting future acquisitions of stock by bank holding companies. And the sample legislation to which he referred affected national as well as State chartered banks. 102 Cong. Rec. 6752-6753. Even if Senator Robertson's statement was intentional, we think it is outweighed by the committee report. See 2 Sutherland, *Statutory Construction* (Third Ed.) §§ 5006, 5012, pp. 491-3, 502-4.

including the stock of banks and bank holding companies, brought an action to have the Illinois Bank Holding Company Act declared unconstitutional. That Act prohibited bank holding companies from the future acquisition of ownership or control of banks located in Illinois, including both State and national banks. 153 N.E. 2d at 808. The issues raised by the plaintiff under the State and Federal Constitutions pertained to improper legislative classification, 153 N.E. at 809. Plaintiff apparently asserted no conflict with the National Bank Act or the Banking Act of 1933. *Ibid.* The Supreme Court of Illinois held that the Illinois statute was constitutional, addressing itself fully to each of the contentions raised by plaintiff. In regard to the question of the Act's application to the acquisition of stock of national banks, the Illinois Court discussed the problem in one paragraph of an otherwise lengthy opinion. 153 N.E. 2d at 810. It noted that Congress, in adopting the Bank Holding Company Act of 1956, did not attempt to preempt the field of regulating bank holding companies. Apparently without the benefit of the Senate Report which clearly indicated that the reservation of power to the States contained in Sec. 7 (12 U.S.C. 1846) was intended to be solely a reservation of their power in regard to State chartered banks,⁴² the Illinois Court concluded that State law could validly apply to prohibit bank holding companies from acquiring ownership or control of national banks. *Ibid.* On its appeal to the Supreme Court, plaintiff relied primarily on assertions of deprivation of equal protection and due process under the 14th Amendment. It did not assert any conflict between the State law and the National Bank Act or the Banking Act of 1933 but did urge that only Federal law governed acquisition of stock of national banks.⁴³ The Su-

⁴² Sen Rept. 1095, Part 1, 84th Cong., 1st Sess., pp. 10-11; Sen Rept. 1095, Part 2, 84th Cong., 2d Sess., p. 5. See *supra*, pp. 36-40.

⁴³ Jurisdictional Statement in No. 718, S. Ct., O.T. 1958, pp. 6-10, 25-32. It did, however, suggest that only the Federal government had the authority to control the acquisition of stock of national banks, and that the Bank Holding Company Act pre-

preme Court dismissed the appeal for want of a substantial Federal question. 359 U.S. 311.

The second opinion relied upon by the district court was an advisory opinion by the members of the Supreme Judicial Court of New Hampshire, in response to a request for advice from the legislature of that State. *Opinion of the Justices*, 151 A. 2d 236. As in the case of the Illinois statute, the proposed New Hampshire bill contained no prohibition against the opening of national banks, and no requirement of divestiture, but only prohibited future acquisitions by bank holding companies. 151 A. 2d at 238. Although recognizing that even the application of this limited State law to national banks raised a serious and substantial question, the New Hampshire Court determined, apparently without the benefit of the legislative history of the Bank Holding Company Act of 1956, to follow the decision in *Braeburn Securities*, *supra*, 151 A. 2d at 239.

Neither decision relied upon by the district court is in point here.⁴⁴ Neither of the State statutes tested in those cases contained any provision comparable to the only provision of Louisiana law which is in issue here. Unlike Sec. 3(5) of the Louisiana Act 275 of 1962, neither statute contained any prohibition against the opening of any national bank, or indeed, any provision requiring divestiture by bank holding companies of ownership in such banks. The State laws there involved only the prohibition against future acquisition of bank stock, and no

empted the field of regulation of bank holding companies. *Id.* at pp. 10-11, 32-35. Appellees contended that neither of these Federal questions were before the Supreme Court, because they had not been properly preserved under Illinois procedures. Appellees' Motion to Dismiss or Affirm, pp. 13-14.

⁴⁴ Without the reservation of power to the States contained in Sec. 7 (12 U.S.C. 1846), the Bank Holding Company Act would probably have been found to have preempted the field, in regard to state chartered as well as national banks. With that reservation, however, there appears to be no substantial question of the Federal constitutionality of State statutes such as those in *Braeburn Securities*, *supra*, in their application to state chartered banks. See *Noble State Bank v. Haskell*, 219 U.S. 104.

provision which would directly prevent the national banks from performing their Federal functions, and no provision which was in conflict with 12 U.S.C. 24, 26, and 27. Lastly, the only substantial Federal questions presented by the statutes involved in those cases, whether they conflicted with terms or policy of R.S. 5139, as amended (12 U.S.C. 52) of the National Bank Act, or with Sec. 19 of the Banking Act of 1933 (12 U.S.C. 61), or with the expressed intent of Congress in adopting the Bank Holding Company Act of 1956 (see, *supra*, pp. 36-40, 46-47), ~~were~~^{were} not raised, briefed or argued.

III

The District Court's Judgment Cannot Be Sustained on the Ground that Whitney-Jefferson Is a Branch of Whitney-New Orleans, Because Congress Recognized the Distinctions Between Group and Branch Banking, and Did Not Wish to Impose the State Restrictions Against Branch Banking upon Affiliates of Bank Holding Companies

This suit was brought upon the theory that Whitney-Jefferson is simply a branch of Whitney-New Orleans, and its establishment is unlawful under the provisions of the Banking Act of 1933 (12 U.S.C. 36), which impose upon national banks the geographical limitations of State laws against branch banking. Although the district court refused to find in favor of appellees on this point, they may try to defend the district court order on that ground.

The short and dispositive answer to any such attempt is that Congress, in both the Banking Act of 1933 and the Bank Holding Company Act of 1956, recognized the substantial differences between branch, chain and group banking, provided one kind of prohibition against branch banking, and a wholly different set of provisions to regulate chain and group banking, expressly rejecting efforts to make the prohibitions against branch banking applicable to the banks which are owned or controlled by bank holding companies.

A. As we have noted in the introductory material set forth above (*supra*, pp. 6-7), the distinctions between branch banking on the one hand and group banking on the other, were well recognized both by persons knowledgeable in the field of banking, and by Congress, well before the adoption of the Banking Act of 1933. Indeed, in 1930 the House Committee on Banking and Currency held extensive hearings on the subject of "Branch, Chain and Group Banking."⁴⁵ The substantial distinctions between these types of multiple unit banking were succinctly summarized at the time by a leading student of banking in the following terms (Cartinhour, *Branch, Group and Chain Banking*, (1931), pp. 59-60):

* * * Branch banking is a system in which the branches are merely offices of the parent institution, extensions of it, but under its direction, with the same officers, management and corporate existence. All of the units of the organization become merged into a single corporation with a common capital, and the entire resources of the parent bank stand behind the branch. Only one legal entity is existent in a branch system. On the other hand, chain and group banks are separate corporate entities, each with its own name, officers, directors, operated quite independently of all the others in the chain, but owned by the same central holding company or individual or group of individuals. Each bank has separate capital and is a distinct organization. * * *

When Congress, under the leadership of Senator Glass of Virginia, adopted the Banking Act of 1933, it chose to limit branch banking for national banks to the geographical limits imposed upon state chartered banks by State law (Sec. 23, 12 U.S.C. 36(c)). In regard to chain and group banking, however, Congress, although imposing certain regulatory obligations and conditions,⁴⁶ refused to impose the branch banking limitations on separate

⁴⁵ Hearings before the House Committee on Banking and Currency on "Branch, Chain and Group Banking", 71st Cong., 2d Sess. (1930).

⁴⁶ See p. 8, *supra*.

banks owned or controlled by the same persons or bank holding companies. In regard to national bank subsidiaries of bank holding companies, Congress adopted a scheme for regulation and control by a Federal regulatory agency (the Federal Reserve Board), but no flat prohibitions on expansion based upon State law. Sec. 19, 12 U.S.C. 61. Indeed, Congress even adopted separate and mutually exclusive definitions for branch banking on the one hand (12 U.S.C. 36(f)), and chain and group banking on the other (Sec. 2, 12 U.S.C. 221a).

That Congress deliberately chose to treat branch banking separately and differently from group banking is clear not only from the statutory language, but also from the legislative history.⁴⁷ Indeed, the distinctions between branch banking on the one hand, and chain and group banking on the other, was so generally recognized and accepted that Senator Glass, the chief author and sponsor of the Banking Act of 1933,⁴⁸ made the following statement on the floor of the Senate a few months before its enactment:

Mr. President: There may now be established chain and group banking systems. There are many such systems. I am not addressing myself to anybody whose confusion of mind is such that he can not differentiate a chain and group banking system from a branch banking system. They are, of course, entirely different.⁴⁹

Those favoring State control over all bank holding company activities long attempted to persuade Congress to change the law, so that the acquisition of ownership or control of banks would be prohibited where the establishment of branches of banks was prohibited by State

⁴⁷ Sen. Rept. 584, 72d Cong., 1st Sess., pp. 10, 11, 15, 16; H. Rept. 150, 73rd Cong., 1st Sess., pp. 3-4. Although the Senate report was made in the prior Congress, it pertained to a bill which was, in all respects material here, the same as the bill which became the Banking Act of 1933, 77 Cong. Rec. 5892.

⁴⁸ 102 Cong. Rec. 6750; 77 Cong. Rec. 5863, 5892.

⁴⁹ 76 Cong. Rec. 1998.

law. As we noted above (*supra*, pp. 36-37), in 1955 the House of Representatives passed a bill (H.R. 6227) which accomplished that end, by directing the Federal Reserve Board to deny any application by a bank holding company to acquire control or ownership of a bank (State or national), unless it was within the geographical area within which State law permitted branch banking to State chartered banks, or unless specifically authorized by State law. 101 Cong. Rec. 8187. The Senate committee expressly rejected this approach, because it did not wish to leave final control over acquisition of national banks to States (see, *supra*, pp. 38-40), and because (Sen. Rept. 1095, Part 1, 84th Cong., 1st Sess., p. 11):

The committee decided against inclusion of a provision in the bill that would automatically apply State laws concerning branch banking to bank holding company operations. The purposes of branch banking laws are not identical with the purpose of this bill to control bank holding companies. * * * It is believed the bill contains adequate provisions to regulate bank holding company operations without an arbitrary tie-in with branch banking laws.

On the floor of the Senate, Senator Robertson, the sponsor and manager of the Senate bill explained his views and those of his committee even more explicitly (102 Cong. Rec. 6753):

The committee also decided against the inclusion of a provision in the bill which would automatically apply State law concerning branch banking to bank-holding company operations. This provision was contained in the House bill and was advocated by the Independent Bankers Association. A bank branch is, by form ownership, and functions, vastly different from a bank-holding company affiliate.

Senator Robertson then inserted into the Congressional Record a chart showing clearly the many differences between a bank affiliated with a bank holding company, and the branch of bank. 102 Cong. Rec. 6753-6754.⁵⁰ As we

⁵⁰ For the convenience of the Court, we have reprinted the chart as Appendix B, *infra*, pp. 64-67.

have noted above (*supra*, p. 40), the views of Senator Robertson and his committee prevailed, and his bill with the exception of a few amendments not pertinent here, became the Bank Holding Company Act of 1956.

In light of the express and clear Congressional rejection of attempts to make group banking subject to State limitations against branch banking, appellees' attempt to do precisely the same thing in this case must fail. This Court has recently rejected a similar effort to make the State prohibitions against branch banking applicable to chain banking. *Camden Trust Co. v. Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, petition for rehearing *en banc* denied, *Id.*, certiorari denied, 369 U.S. 886. The reasoning and holding of this Court's decision in that case are controlling here. Indeed, by the very enactment of the Bank Holding Company Act of 1956 Congress has made its intent that group banking is to be treated in a wholly different fashion than branch banking even clearer than its intent that branch banking restrictions are inapplicable to chain banking.

Similarly, the Ninth Circuit has, in a case substantially on all fours with one at bar, recently rejected an attempt to hold the branch banking prohibitions of 12 U.S.C. 36 applicable to an affiliate of a bank holding company. *First Nat. Bank of Billings v. First Bank Stock Corp.*, 306 F. 2d 937 (C.A. 9). And the Fifth Circuit has recently rejected a similar effort to apply 12 U.S.C. 36 to limit the authority of a national bank to open limited banking offices. *State of Texas v. Nat. Bank of Commerce*, 290 F. 2d 229 (C.A. 5), certiorari denied, 368 U.S. 832.

B. We need not consider here whether the branch banking restrictions of State law incorporated into 12 U.S.C. 36 could ever apply to prohibit the Comptroller from issuing a Certificate of Authority to permit a national bank to commerce the business of banking (12 U.S.C. 27), because it is clear in this case that in fact, as well as in law, Whitney-Jefferson is not a branch of Whitney-New Orleans. For, with the possible exception of stock ownership, the differences between a branch

each of

bank and a bank affiliated with a bank holding company, such as corporate organization, supervision, board of directors, management, capital structure, deposits, loan limits, loanable funds and termination (App. B, *infra*, pp. 64-67), which prompted Congress to treat the group banking differently than branch banking, is present here. Indeed, in the recent Ninth Circuit decision refusing to apply the limitations of State law incorporated by 12 U.S.C. 36 to an affiliate of a bank, the relationship between the two banks was closer than the relationship between Whitney-New Orleans and Whitney-Jefferson. *First Nat. Bank of Billings v. First Nat. Bank Stock Corp.*, 306 F. 2d 397 (C.A. 9). The same result should follow here.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, with instructions to dismiss the action for want of standing, or, in the alternative, to enter judgment on the merit for appellants.

Respectfully submitted,

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APRIL, 1963

APPENDIX A

1. The Constitution of the United States provides in pertinent part, Article VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2. The National Bank Act provides in pertinent part:

a. R.S. § 5136, as amended, 12 U.S.C. 24:

Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession from February 25, 1927, or from the date of its organization if organized after February 25, 1927, until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this chapter. * * *

b. R.S. § 5139, as amended, 12 U.S.C. 52:

The capital stock of each association shall be divided into shares of \$100 each, or into shares of such less amount as may be provided in the articles of association, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired. * * *

c. R. S. § 5168, 12 U.S.C. 26:

Whenever a certificate is transmitted to the Comptroller of the Currency, as provided in this Title, and the association transmitting the same notifies the Comptroller that at least fifty per centum of its capital stock has been duly paid in, and that such association has complied with all the provisions of this Title required to be complied with before an association shall be authorized to commence the business of banking, the Comptroller shall examine into the condition of such association, ascertain especially the amount of money paid in on account of its capi-

tal, the name and place of residence of each of its directors, and the amount of the capital stock of which each is the owner in good faith, and generally whether such association has complied with all the provisions of this Title required to entitle it to engage in the business of banking; and shall cause to be made and attested by the oaths of a majority of the directors, and by the president or cashier of the association, a statement of all the facts necessary to enable the Comptroller to determine whether the association is lawfully entitled to commence the business of banking.

d. R. S. § 5169, 12 U.S.C. 27:

If, upon a careful examination of the facts so reported, and of any other facts which may come to the knowledge of the Comptroller, whether by means of a special commission appointed by him for the purpose of inquiring into the condition of such association, or otherwise, it appears that such association is lawfully entitled to commence the business of banking, the Comptroller shall give to such association a certificate, under his hand and official seal, that such association has complied with all the provisions required to be complied with before commencing the business of banking, and that such association is authorized to commence such business. But the Comptroller may withhold from an association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than the legitimate objects contemplated by this Title.

2. The Banking Act of 1933 (Act of June 16, 1933, 48 Stat. 1890) provides in pertinent part:

a. Section 23, as amended, 12 U.S.C. 36:

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously

maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

(b) If a State bank is after February 25, 1927, converted into or consolidated with a national banking association, or if two or more national banking associations are consolidated, such converted or consolidated association may, with respect to any of such banks, retain and operate any of their branches which may have been in lawful operation by any bank on February 25, 1927.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided*, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. * * *

(f) The term "branch" as used in this section shall be held to include any branch bank, branch

office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

b. Section 19, as amended, 12 U.S.C. 61:

In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, * * * except that * * * (4) shares controlled by any holding company affiliate of a national bank shall not be voted unless such holding company affiliate shall have first obtained a voting permit as hereinafter provided, which permit is in force at the time such shares are voted, but such holding company affiliate may, without obtaining such permit, vote in favor of placing the association in voluntary liquidation or taking any other action pertaining to the voluntary liquidation of such association. * * *

For the purposes of this section shares shall be deemed to be controlled by a holding company affiliate if they are owned or controlled directly or indirectly by such holding company affiliate, or held by any trustee for the benefit of the shareholders or members thereof.

Any such holding company affiliate may make application to the Board of Governors of the Federal Reserve system for a voting permit entitling it to vote the stock controlled by it at any or all meetings of shareholders of such banks or authorizing the trustee or trustees holding the stock for its benefit or for the benefit of its shareholders so to vote the same. The Board of Governors of the Federal Reserve System may, in its discretion, grant or withhold such permit as the public interest may require. In acting upon such application, the Board shall consider the financial condition of the applicant, the general character of its management, and the probable effect of the granting of such permit upon the affairs of such bank, but no such permit shall be granted except upon the following conditions: * * *

3. The Bank Holding Company Act of 1956 (Act of May 9, 1956, 70 Stat. 133), provides in pertinent part:

a. Section 3, 12 U.S.C. 1842:

(a) Prior approval of Board as necessary; exceptions.

It shall be unlawful except with the prior approval of the Board (1) for any action to be taken which results in a company becoming a bank holding company under section 1841(a) of this title; (2) for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank; (3) for any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or (4) for any bank holding company to merge or consolidate with any other bank holding company. * * *

* * * * *

(c) Factors governing determination of application for approval.

In determining whether or not to approve any acquisition or merger or consolidation under this section, the Board shall take into consideration the following factors: (1) the financial history and condition of the company or companies and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition or merger or consolidation would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

(d) Limitation by State boundaries.

Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indi-

rectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside the State in which such bank holding company maintains its principal office and place of business or in which it conducts its principal operations unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication.

b. Section 7, 12 U.S.C. 1846:

The enactment by the Congress of this chapter shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof.

c. Section 9, 12 U.S.C. 1848:

Any party aggrieved by an order of the Board under this chapter may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business or in the Court of Appeals in the District of Columbia, by filing in the court, within sixty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

4. Louisiana Act 275 of 1962, provides in pertinent part:

It shall be unlawful:

(1) for any action to be taken which results in a company or a bank becoming a bank holding company as defined in this Chapter;

(2) for any bank holding company or subsidiary thereof to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company or subsidiary will directly or indirectly own or control more than 25 per centum of the voting shares of such bank;

(3) for any bank holding company or subsidiary thereof to acquire all or substantially all of the assets of a bank; or

(4) for any bank holding company or subsidiary thereof to open for business any bank not now opened for business, whether or not, a charter, permit, license or certificate to open for business has already been issued. Notwithstanding the foregoing, this prohibition shall not apply to additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition.

APPENDIX B

(102 Cong. Rec. 6753-6754)

COMPARISON OF BRANCH BANKING AND HOLDING
COMPANY OPERATIONS

Branch Banking

Holding Company Operation

*Corporate Organization**Corporation Organization*

One legal entity created under a single charter covering the main office of bank and all its branches.

Two or more separate legal entities each created under a separate charter, one for each bank affiliate.

*Stockholders**Stockholders*

Possess the same stockholders.

Possess different set of stockholders for each affiliate.

*Supervision**Supervision*

Main office of bank and all branches are under supervision of the identical authority as provided by the laws under which organized. Could be either Federal or State laws.

Each affiliate individually is subject to supervision under the laws under which it was separately organized. Some affiliates could be organized under State laws and others under Federal laws.

Main office and all branches also would be subject to supervision of Federal Reserve System if a member or FDIC, if insured.

Each affiliate may or may not be subject to supervision of Federal Reserve System or FDIC, depending if such affiliate is a member of the Federal Reserve System or if insured in the FDIC.

If a holding company controls both national and State member banks and procures a voting permit, then the holding company, as well as all of its affiliated nonmember State banks are subject to examination by and reporting of the Comptroller of the Currency and the Federal Reserve Board.

Branch Banking*Board of Directors*

One board of directors.

Holding Company Operation*Board of Directors*

A separate board for each affiliate. Statutes commonly impose residence requirement.

For example, national banking laws require that every director, during his whole term of service must be a citizen of the United States, and at least three-fourths of the directors must have resided in the State, Territory, or district in which the association is located, or within 50 miles of the location of the office of the association for at least 1 year immediately preceding their election, and must be residents of such State or reside within a 50-mile territory of the location of the association during their continuance in office.

Each director must own stock in the association, the aggregate par value of which shall be at least \$1,000, unless the capital of the bank does not exceed \$25,000, in which case he shall own not less than \$500.

Any director ceasing to own the required number of shares, shall vacate his place.

Management

Amounts to absentee management by officers of main office and board of directors. Officers in charge usually have limited powers.

Management

Affiliates are local institutions managed by local board of directors and officers. May have some supervision and assistance on loan and investment overall policies from holding company.

Branch Banking

Capital structure

Single capital structure for main office and all its branches.

Deposits

All deposits pooled as deposit liability of and available for investment or loans by the bank through main office or any of its branches.

Loan Limit

Loan limit based upon capital and surplus applies to the aggregate of all loans made at main office and at all branches. (In case of National Banks the limit is 10 percent of capital and surplus).

As a result a small branch in an industrial section can handle the loan requirements of large customers up to the total limit permitted of the whole branch banking operation. Consequently the branch usually carries the deposit accounts of such customers.

Loanable funds

Each branch has access to entire capital funds and deposits of the bank (main office) and all branches. Consequently a branch might lend more than the total deposits of that particular branch.

Holding Company Operation

Capital structure

Separate capital structure for each affiliate. Changes in capital are subject to the supervisory authority having jurisdiction over each affiliate.

Deposits

Each affiliate has its own deposits which are its sole liability, and which such affiliate alone can invest or loan from its own office and to its own customers.

Loan limit

Each affiliate has its own loan limit based upon its own capital and surplus. This limit has no relation to capital and surplus of any or all of the other affiliate banks and the holding company.

An affiliate has a special restriction imposed by section 24 of the Federal Reserve Act with respect to loans to other affiliates.

An affiliate in an industrial section can only handle the loan requirements of a customer up to its individual limits. Consequently substantial deposits of the customer usually go to a larger bank or branch banking operation with larger loan limits.

Loanable funds

Each affiliate has available for loans only its own capital funds and deposits. This parallels the situation of independent banks. An affiliate therefore is dependent upon correspondent banks to share excess loans.

Branch Banking*Termination*

Branch can be closed at any time if unprofitable. All that is required to close a national bank branch is a resolution of the board of directors or of the stockholders, if branch is described in articles of association, and the transmittal to the comptroller of such resolution together with certificate authorizing the branch.

Holding Company Operation*Termination*

Requires voluntary liquidation of affiliate according to provisions of the State or Federal laws under which it was chartered.